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IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT
No.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,
versus

THE RADIO OFFICERS' UNION OF THE
COMMERCIAL TELEGRAPHERS UNION, AFL,
Respondent.

**Petition for Enforcement of an Order of the
National Labor Relations Board**

*To the Honorable, the Judges of the United States
Court of Appeals for the Second Circuit:*

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. IV, Secs. 151, *et seq.*), hereinafter called the Act, respectfully petitions this Court for the enforcement of its order against Respondent, The Radio Officers' Union of the Commercial Telegraphers Union, AFL (hereinafter referred to as Respondent), and its agents. The proceeding resulting in said order is known upon the records of the Board as "In the Matter of the Radio Officers' Union of the Commercial Telegraphers Union, AFL, and Willard Christian Fowler, an individual, case No. 2-CB-91."

In support of this petition the Board respectfully shows:

*Petition for Enforcement of an Order of the
National Labor Relations Board*

(1) Respondent Union is a labor organization engaged in promoting and protecting the interests of its members in the State of New York, within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

(2) Upon all proceedings had in said matter before the Board, as more fully shown by the entire record thereof certified by the Board and filed with this Court herein, to which reference is hereby made, the Board on April 18, 1951, duly stated its findings of fact and conclusions of law, and issued an order directed to the Respondent, and its agents. The aforesaid provides as follows:

ORDER

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, the Radio Officers' Union of the Commercial Telegraphers Union, AFL, and its agents, shall:

1. Cease and desist from:

(a) Causing or attempting to cause A. H. Bull Steamship Company, its successors and assigns, to discriminate against Willard Christian Fowler or any other employee in violation of Section 8 (a) (3) of the Act; and

(b) Restraining or coercing employees or prospective employees of A. H. Bull Steamship Company, its succes-

*Petition for Enforcement of an Order of the
National Labor Relations Board*

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sors and assigns, in the exercise of their right to refrain from any or all of the concerted activities listed in Section 7 of the Act, except to the extent that such right may be affected by the proviso to Section 8 (b) (1) (A), or by an agreement requiring membership in the Respondent as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

8

(a) Notify A. H. Bull Steamship Company in writing that it withdraws any objection to the employment of Willard Christian Fowler and requests it to offer him immediate employment;

(b) Notify Willard Christian Fowler that it has advised A. H. Bull Steamship Company that it withdraws its objection to his employment and requests it to offer him immediate employment;

(c) Make whole Willard Christian Fowler in the manner set forth in the Intermediate Report in the section entitled "The remedy";

9

(d) Post at its office in New York City copies of the notice attached hereto and marked Appendix A.¹² Copies of said notice, to be furnished by the Regional Director for the Second Region, shall, after being duly signed by the Respondent's representative, be posted by it immediately upon receipt thereof and be maintained by it for a period

¹² In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be inserted before the words, "Decision and Order," the words, "Decree of the United States Court of Appeals Enforcing."

10 *Petition for Enforcement of an Order of the
National Labor Relations Board*

of at least sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that such notices are not altered, defaced, or covered by any other material;

11 (e) Mail to the Regional Director for the Second Region signed copies of the notice attached hereto as Appendix A for posting, the Employer willing, at the office and docks of A. H. Bull Steamship Company, in places where notices to employees are customarily posted. Copies of said notice, to be furnished by the Regional Director for the Second Region, shall, after being signed as provided in paragraph 2 (d) above, be forthwith returned to said Regional Director for said posting;

(f) Notify the Regional Director for the Second Region in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith.

12 (3) On April 18, 1951 the Board's Decision and Order was served upon Respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Respondent's Counsel.

(4) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, the Board is certifying and filing with this Court a transcript of the entire record of the proceeding before the Board, including the pleadings, testimony and evidence, findings of facts, conclusions of law, and order of the Board.

WHEREFORE, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript

*Petition for Enforcement of an Order of the
National Labor Relations Board*

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to be served upon Respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the order made thereupon as set forth in paragraph (2) hereof, a decree enforcing in whole said order of the Board, and requiring Respondent and its agents to comply therewith.

NATIONAL LABOR RELATIONS BOARD

14

By /s/ A. Norman Somers

A. Norman Somers

Assistant General Counsel

Dated at Washington, D. C.

this 26 day of October 1951.

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APPENDIX A

NOTICE

TO ALL MEMBERS OF THE RADIO OFFICERS' UNION OF THE COMMERCIAL TELEGRAPHERS UNION, AFL, AND TO ALL EMPLOYEES AND PROSPECTIVE EMPLOYEES OF THE A. H. BULL STEAMSHIP COMPANY

17.

PURSUANT TO

A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT cause or attempt to cause A. H. BULL STEAMSHIP COMPANY or its successors and assigns, to discriminate against Willard Christian Fowler or any other employee or prospective employee in violation of Section 8 (a) (3) of the Act.

18

WE WILL NOT restrain or coerce employees or prospective employees of the A. H. BULL STEAMSHIP COMPANY, its successors or assigns, in their exercise of the right to refrain from any or all of the concerted activities listed in Section 7 of the Act, except to the extent that such right may be affected by the proviso in Section 8 (b) (1) (A) of the Act, or by an agreement requiring membership in a labor organization as

*Appendix A Attached to Petition for Enforcement of an
Order of the National Labor Relations Board* 19

a condition of employment, as authorized in Section 8
(a) (3) of the Act.

WE WILL notify in writing the A. H. BULL STEAM-
SHIP COMPANY that we withdraw our objections to
the employment by it of Willard Christian Fowler and
request it to offer him employment as a radio officer.

WE WILL notify Willard Christian Fowler that we
have advised A. H. BULL STEAMSHIP COMPANY 20
that we withdraw our objections to his employment
and that we request it to offer him employment as a
radio officer.

WE WILL make Willard Christian Fowler whole for
any loss of pay suffered by him as the result of our
having prevented his hire by A. H. BULL STEAM-
SHIP COMPANY.

THE RADIO OFFICERS' UNION OF THE
COMMERCIAL TELEGRAPHERS UNION, AFL
(Union)

Dated..... By..... 21
(Representative) (Title)

This notice must remain posted for sixty (60) days from
the date of posting and must not be altered, defaced, or
covered by any other material.

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The Charge
(General Counsel's Exhibit 1-A)

NLRB 508
(10-20-47)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

**CHARGE AGAINST LABOR ORGANIZATION
OR ITS AGENTS**

23

1. Pursuant to Section 10(b) of the National Labor Relations Act, the undersigned hereby charges that RADIO

(Name

OFFICERS UNION at 1440 Broadway, New York, N. Y.
of labor organization or its agents)

has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of Section 8(b) subsections 1 and 2 of said Act, in that: (Recite in detail in paragraph 2 the basis of the charge. Be specific as to names, addresses, plants, dates, places, and other relevant facts)

24

2. On or about February 28, 1948 and April 26, 1948, it caused A. H. BULL STEAMSHIP COMPANY to discriminate against the undersigned on some ground other than failure of the undersigned to tender the periodic dues required for retaining membership in said labor organization.

By the above and by other acts, the said labor organization, by its officers, agents or employees, has restrained and coerced employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, as amended.

The Charge
(General Counsel's Exhibit 1-A)

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The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

3. Name of Employer A. H. BULL STEAMSHIP COMPANY

4. Location of plant involved 115 Broad Street, New
(Street)
York, N. Y. Employing unknown
(City) (State) (Number of workers)

26

5. Nature of business Steamship operators and agents

6. (Paragraphs 6, 7, and 8 apply only if the charge is filed by a labor organization) The labor organization filing this charge, hereinafter called the union, has complied with Section 9(f)(A), 9(f)(B)(1), and 9(g) of said Act as amended, as evidenced by letter of compliance issued by the Department of Labor and bearing code number The financial data filed with the Secretary of Labor is for the fiscal year ending
..... A Certificate has been filed with the National Labor Relations Board in accordance with Section 9(f)(B)(2) stating the method employed by the union in furnishing to all its members copies of the financial data required to be filed with the Secretary of Labor. not applicable.

27

7. Each of the officers of the union has executed a non-communist affidavit as required by Section 9(h) of the Act.*

* Not applicable.

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The Charge
(General Counsel's Exhibit 1-A)

8. Upon information and belief, the national or international labor organization of which this organization is an affiliate or constituent unit has also complied with Section 9(f), (g), and (h) of the Act.

WILLARD CHRISTIAN FOWLER

(Full name of party filing charge)

29

68 S. W. 8th Street, Miami 36, Florida 2-1366
(Address) (Street) (City) (State) (Telephone number)

By (Signed) **WILLARD CHRISTIAN FOWLER**
(Signature of representative or person filing charge)

Individual

(Title or office, if any)

Subscribed and sworn to before me this 16th day of June 1948 at Miami, Fla. as true to the best of deponent's knowledge, information and belief.

(Signed) **HELEN E. FIRMAN**

(Board Agent or Notary Public)

30

Notary Public, State of Florida at Large.

My commission expires March 7, 1951.

(NOTARIAL SEAL)

DO NOT WRITE IN THIS SPACE

Case No. 2-CB-91

Date filed 6/18/48

9(f),(g),(h) cleared

Complaint
(General Counsel's Exhibit 1-D)

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
- SECOND REGION
Case No. 2-CB-91

In the Matter of
THE RADIO OFFICERS' UNION OF THE
COMMERCIAL TELEGRAPHERS UNION, AFL

and

WILLARD CHRISTIAN FOWLER, an individual

It having been charged by Willard Christian Fowler, an individual, of 68 Southwest 8th Street, Miami, Florida, that The Radio Officers' Union of the Commercial Telegraphers Union, AFL, of 1440 Broadway, New York, New York, hereinafter called Respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce, as set forth and defined in the National Labor Relations Act, as amended, 61 Stat. 136, 29 U. S. C., Supp. I, Sec. 151, *et seq.*, hereinafter referred to as the Act, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Regional Director for the Second Region, designated by the Board's Rules and Regu-

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Complaint
(General Counsel's Exhibit 1-D)

lations—Series 5, as amended, Section 203.15, hereby issues this Complaint and alleges as follows:

1. A copy of the Charge in this proceeding was served upon Respondent on June 19, 1948.

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2. A. H. Bull Steamship Company, hereinafter referred to as the Employer, is and has been since 1902, and at all times hereinafter mentioned, a corporation duly organized under and existing by virtue of the laws of the State of New Jersey.

3. At all times herein mentioned, the Employer has maintained its principal office and place of business at 115 Broad Street, in the City, County and State of New York.

4. The Employer is and at all times mentioned herein has been continuously engaged in operating its own ships and ships chartered by it, in coastwise and foreign shipping.

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5. During each of the years 1948 and 1949, the Employer, in the course and conduct of its business operations, transported by steamship articles and commodities valued in excess of \$5,000,000 in interstate and foreign commerce between various states of the United States and between the United States and foreign countries.

6. The aforesaid Employer is and has been engaged in commerce within the meaning of the Act.

7. Respondent is a labor organization within the meaning of Section 2(5) of the Act, and has its principal office

Complaint
(General Counsel's Exhibit 1-D)

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and place of business at 1440 Broadway, in the City, County and State of New York.

8. Respondent, by its officers, agents, organizers and representatives, has since on or about April 26, 1948, caused and/or attempted to cause the Employer to discriminate against its prospective employee, Willard Christian Fowler, in regard to hire or tenure of employment and other terms or conditions of employment, by demanding and requiring that the said Employer withdraw an offer of employment which it had made to said Willard Christian Fowler, and by demanding and requiring that said Willard Christian Fowler be refused employment by the said Employer.

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9. The Employer, pursuant to and because of the afore-said demands of Respondent, on or about April 26, 1948 withdrew its offer of employment from its prospective employee, Willard Christian Fowler, and refused to employ him.

10. Since on or about April 26, 1948, the Employer has failed and refused, and continues to refuse, to employ the said Willard Christian Fowler in his formerly offered position or employment or in a substantially equivalent position or employment.

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11. The Employer did refuse to employ said Willard Christian Fowler, and continues to refuse to employ him, by reason of the demands of Respondent, referred to in paragraph 8, above.

*Complaint**(General Counsel's Exhibit 1-D)*

12. By the acts described in paragraphs 9, 10 and 11, above, the Employer did discriminate and is discriminating in regard to the hire or tenure or terms or conditions of employment of its prospective employee, Willard Christian Fowler, thereby encouraging membership in a labor organization.

13. By the acts described in paragraph 8, above, Respondent did restrain and coerce and now restrains and coerces employees or prospective employees of the Employer in the exercise of the rights guaranteed by the Act, and thereby did engage in and is engaging in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.

14. By the acts described in paragraph 8, above, Respondent did cause and/or attempt to cause and is causing and attempting to cause the Employer to discriminate in regard to the hire or tenure or terms or conditions of employment of its prospective employee, Willard Christian Fowler, thereby encouraging membership in a labor organization and, by all of said acts and by each of them, Respondent did engage in and is engaging in unfair labor practices within the meaning of Section 8(b)(2) of the Act.

15. The activities of Respondent and of the Employer, described in paragraphs 8, 9, 10 and 11, above, occurring in connection with the operations of the Employer, described in paragraphs 2, 3, 4, 5 and 6, above, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and between the states of

*Complaint**(General Counsel's Exhibit 1-D)*

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the United States and foreign countries, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce, and constitute unfair labor practices affecting commerce within the meaning of Section 8(b)(1) and (2) and Section 2(6) and (7) of the Act.

WHEREFORE, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Regional Director for the Second Region, on this 2nd day of March, 1950, issues this Complaint against The Radio Officers' Union of the Commercial Telegraphers Union, AFL, respondent herein.

44

(Signed) CHARLES T. DOUDS
CHARLES T. DOUDS

Charles T. Douds, Regional Director
National Labor Relations Board
2 Park Avenue
New York 16, New York

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**Respondent's Answer
(General Counsel's Exhibit 1-F)**

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
SECOND REGION
Case No. 2-CB-91

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In the Matter of
THE RADIO OFFICERS' UNION OF THE
COMMERCIAL TELEGRAPHERS UNION, AFL
and

WILLARD CHRISTIAN FOWLER, an individual

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THE RADIO OFFICERS' UNION OF THE COMMERCIAL TELEGRAPHERS UNION, AFL, respondent herein, answering the Complaint herein, alleges as follows:

1. Denies the allegations of paragraph numbered "1" of the Complaint, except that it admits service upon it of a copy of the charge annexed to the Complaint in this proceeding.
2. Denies knowledge or information sufficient to form a belief as to each and every allegation of the Complaint contained in paragraphs numbered "2", "4", "5" and "10".

Respondent's Answer
(General Counsel's Exhibit 1-F)

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3. Denies each and every allegation contained in paragraphs of the Complaint numbered "8", "9", "11", "12", "13", "14" and "15".

WHEREFORE, THE RADIO OFFICERS' UNION OF THE COMMERCIAL TELEGRAPHERS UNION, AFL, respondent herein, prays that the Complaint herein be dismissed.

BUTTER & SILVERMAN
Attorney for Respondent
 Office & P. O. Address
 401 Broadway
 New York 13, N. Y.

50

Post Office Address of Respondent:

1440 Broadway
 Borough of Manhattan
 City of New York.

STATE OF NEW YORK,
 CITY OF NEW YORK,
 COUNTY OF NEW YORK, ss.:

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FRED M. HOWE, being duly sworn, deposes and says that he is the General Secretary-Treasurer of the respondent in the within proceeding; that he has read the foregoing ANSWER and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein

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Respondent's Answer
(General Counsel's Exhibit 1-F)

stated to be alleged on information and belief, and that as to those matters he believes it to be true.

(Signed) FRED M. HOWE
Fred M. Howe

Sworn to before me this
9th day of March, 1950.

53

(Signed) BESSIE M. STEWART

Bessie M. Stewart
Notary Public in the State of N. Y.
Qualified in New York County
No. 31-3847250
Cert. filed in Kings, Bronx and
Queens Co. Clk's & Reg. Office
Commission expires March 30, 1951

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**Notice of Motion to Amend the Complaint
(General Counsel's Exhibit 1-H)**

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
SECOND REGION
Case No. 2-CB-91

In the Matter of
THE RADIO OFFICERS' UNION OF THE
COMMERCIAL TELEGRAPHERS UNION, AFL
and
WILLARD CHRISTIAN FOWLER, an Individual

S I R S :

PLEASE TAKE NOTICE that upon the opening of the hearing in the above-entitled matter, now set for the third day of April, 1950, at 1:00 p.m., in the Hearing Room, on the 24th Floor, 2 Park Avenue, New York, New York, or as soon thereafter as counsel may be heard, the undersigned will move to amend the Complaint heretofore issued herein in the following respects:

A. By amending paragraph 8 of said Complaint to read as follows:

*Notice of Motion to Amend the Complaint
(General Counsel's Exhibit 1-H)*

8. Respondent, by its officers, agents, organizers and representatives, has since or or about February 27, 1948, and since on or about April 26, 1948, caused and/or attempted to cause the Employer to discriminate against its prospective employee, Willard Christian Fowler, in regard to hire or tenure of employment and other terms or conditions of employment, by demanding and requiring that the said Employer withdraw offers of employment which it had made to said Willard Christian Fowler, and by demanding and requiring that said Willard Christian Fowler be refused employment by the said Employer.

B. By amending paragraph 9 of said Complaint to read as follows:

9. The Employer, pursuant to and because of the aforesaid demands of Respondent did, on or about February 27, 1948, and on or about April 26, 1948, withdraw its offers of employment from its prospective employee, Willard Christian Fowler, and refused to employ him.

C. By amending paragraph 10 of said Complaint to read as follows:

10. Since on or about February 27, 1948, and since April 26, 1948, the Employer has failed and refused, and continues to refuse, to employ the said Willard Christian Fowler in his formerly offered position or

Notice of Motion to Amend the Complaint
(General Counsel's Exhibit 1-H)

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employment, or in a substantially equivalent position
 or employment.

Dated at New York, New York
 this 31st day of March, 1950.

(Signed) OSCAR GELTMAN
 Oscar Geltman
 Counsel for the General Counsel
 National Labor Relations Board
 Second Region
 2 Park Avenue
 New York 16, New York

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To:

Butler & Silverman, Esquires
 By: Abner H. Silverman, Esq.
 401 Broadway,
 New York 13, New York
 Counsel for Respondent,
 The Radio Officers' Union of the
 Commercial Telegraphers Union, AFL

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Respondent,
 The Radio Officers' Union of the
 Commercial Telegraphers Union, AFL
 1440 Broadway
 New York 18, New York

Decision and Order

D-4749

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
Case No. 2-CB-91

In the Matter of

THE RADIO OFFICERS' UNION OF THE
COMMERCIAL TELEGRAPHERS UNION, AFL

and

WILLARD CHRISTIAN FOWLER, an individual

On July 24, 1950, Trial Examiner William F. Scharnikow issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged and was engaging in certain unfair labor practices in violation of Section 8(b)(1)(A) and 8(b)(2) of the National Labor Relations Act, as amended, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.¹ The General Counsel also filed a brief.

¹ The Respondent's request for oral argument is hereby denied, as the record, including the exceptions and briefs, adequately sets forth the positions of the parties.

Decision and Order

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The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions, the briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following additions:

1. We agree with the Trial Examiner's conclusion that the Respondent unlawfully caused A. H. Bull Steamship Company to discriminate against Fowler in regard to his hire as a radio officer. We have carefully considered each of the grounds urged in the Respondent's brief for rejection of the Trial Examiner's recommendations, and find them insubstantial.

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The heart of the defense is the contention that the Respondent's contract with the Company by its terms provides for a hiring hall, and that therefore the Respondent could resist the Company's attempts to hire Fowler by direct negotiations. We are satisfied that the contract contains no such provision. It makes no reference to a hiring hall by name, nor does it otherwise provide for hiring through the Union. On the contrary, it expressly reserves to the Company the right freely to select its radio officers. The sole condition of employment imposed by the contract is preference to union members in good standing if such employees are available.

69

The Respondent's assertion that there is a "hiring hall" provision rests primarily upon the fact that the contract requires the Union to grant clearances to union members in good standing. This obligation by the Union follows immediately after the reservation to the Company of the

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Decision and Order

right of free selection and its promise to take appropriate measures to assure that newly hired personnel are in good standing with the Union.² Logic impels the conclusion that these two obligatory provisions are complementary; the Company is charged with responsibility to ascertain the good standing of any radio officers it might hire, and the Respondent, best informed as to their union standing, is obligated to certify their status and thereby assure the Company that it has carried out its contractual obligation.

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That this is the correct import of the clearance provision of the contract, and that such understanding is not, as our dissenting colleague believes, incompatible with the right of free selection by the Company, is definitely established by the last clause in the same section 6: it reads, "If an employee is not a member in good standing, the Union will so notify the Company in writing." If, as the Respondent contends, the Company were only permitted to hire employees referred by the union, there could be no occasion for the union to advise the Company that any particular employee, referred from the union hall, was not in good standing. This last sentence of section 6 could only refer, then, to the situation where the Company directly hires an employee whom it believes to be in good standing, but who, in the opinion of the union, is not.³

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² Article I, section 6, of the contract reads as follows:

Section 6. The Company shall have the right of free selection of all its Radio Officers and when members of the Union are transferred, promoted, or hired the Company agrees to take appropriate measures to assure that such members are in good standing, and the Union agrees to grant all members of the Union in good standing the necessary "clearance" for the position to which the Radio Officer has been assigned. If a member is not in good standing, the Union will so notify the Company in writing.

³ In concluding that the contract permitted the Company to hire employees directly, we do not rely on Article I, section 3, of the agreement,

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We conclude, therefore, as did the Trial Examiner, that the contract was clear on its face and did not provide for any hiring hall arrangement. In these circumstances, the Trial Examiner properly excluded evidence relating to the parties' interpretation of its provisions and to their hiring practices during the period of its existence.⁴ Assuming, however, that the contract was in any sense ambiguous on its face, evidence as to the understanding of the parties outside the contract would nevertheless be irrelevant to this proceeding. We are here considering a contract urged as a defense to otherwise illegal conduct. As the Board has long held: "In view of the stringent requirements of closed-shop provisions, it is not too much to require that the parties thereto express the essentials of such provisions in unmistakable language."⁵ Where contracts are urged as defenses to otherwise illegal conduct, we perceive no significant differences between construing closed shop and hiring hall clauses. In either case contractual authority to engage in the permissible limited inroad into the protection afforded all employees by Section 7 of the Act must be clear and unambiguous. And the Board has not, as our dissenting colleague suggests, read hiring hall provisions into contracts where they did not clearly appear.⁶

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requiring the Company to give the Respondent 24-hour notice before hiring a nonunion employee. We deem this clause compatible with either a hiring hall or a direct hiring arrangement.

⁴ *Western Can Co.*, 83 NLRB 489.

⁵ *Iron Fireman Manufacturing Co.*, 69 NLRB 19.

See, also, *Don Juan Co.*, 79 NLRB 154: "There is no such [maintenance of membership] obvious language in this contract, and the interpretation of the parties is not a substitute therefor."

⁶ The following contract clauses were deemed to establish hiring halls, although not so named:

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We are equally satisfied that the union security provision which the contract did contain—preferential hiring of members in good standing—cannot serve as a defense in this case. No claim is made that Fowler was suspended in April, the second occasion when the Respondent refused to clear him at the Company's request. Like the Trial Examiner, we find that he was also a union member in good standing in February, notwithstanding Respondent Representative Howe's hasty attempt to suspend him in disregard of Fowler's rights under the union bylaws and constitution. It is true that in the absence of the general chairman and of the general committee, Howe was authorized to act in their place and stead. It may also be true, as the Respondent asserts, that in February these special provisions of the bylaws were applicable, although the record contains no evidence supporting the assertion. However, in no event could Howe's authority exceed that of the general chairman, who in all instances was required by specific provisions of the bylaws to advise Fowler of his offense and to afford him an opportunity to conform with union rules before suspending him.⁷ It is clear that Fowler was not

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National Maritime Union of America, 82 NLRB 1365, at page 1375.

"The Company agrees that during the period that this agreement is in effect all unlicensed personnel shall be obtained through the offices of the Union."

American Radio Association, 82 NLRB 1344, at page 1355: "All radio officers employed on such vessels shall be chosen from the list of unemployed radio officers on file at the nearest office of the Union."

National Maritime Union of America, 78 NLRB 971, at page 973: "The Union agrees to furnish satisfactory men and the Company agrees that during the period that this agreement is in effect, all replacements shall be hired through the offices of the Union, as vacancies occur."

⁷ Article 17, Section 1, of the Respondent's bylaws reads as follows:

"Any member violating the bylaws of the ROU, the CTU constitution, the contracts and agreements held by the ROU, and in any way con-

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given such opportunity; his purported suspension was therefore ineffectual. As he was a union member in good standing, he was not vulnerable to discrimination in his employment under the existing contract.

Our authority to look to the union rules to ascertain Fowler's union standing finds precedent in the Board's recent decision in *Pressed Steel and Car Co., Inc.*,⁸ where the Board did not consider itself bound by the union's interpretation of its own rules, but looked to the constitution and rules themselves before deciding whether a discharged employee had been in good standing or not.⁹

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Nor do we find merit in the Respondent's contention that its conduct amounted only to a request and was not "cause," for the record clearly establishes that it was Howe's refusal to issue the clearances which brought about the dis-

tributing to the lessening of respect for the laws, rules, contracts, and agreements of the ROU, and the good name of the ROU, shall first be advised by the Officer of the ROU first having knowledge of the foregoing to correct his dereliction, and if such is persisted in and not abated, the member shall be immediately suspended by the General Chairman and have charges against him as provided in Article 7, Section 3, of these bylaws."

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* 89 NLRB No. 36. Member Murdock dissented on another ground.

* For the following reasons, *Member Reynolds*, like *Member Murdock*, does not agree with the majority that because Fowler's suspension proceedings allegedly did not comport with certain procedural requirements of the Respondent's internal laws, the Respondent cannot rely on the union security contract to justify its discrimination against Fowler in February. In his opinion, since Section 102 of the Act preserves the validity of the instant contract executed prior thereto, action thereunder should be weighed in the light of the Board's practice under the Wagner Act of generally refusing to delve into a union's internal affairs. *Member Reynolds* therefore would not question the validity of the union's action in depriving Fowler of good standing in February and would limit his finding of discrimination to the Respondent's failure to clear Fowler in April when his good standing had been restored.

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crimination against Fowler.¹⁰ And, finally, as the Board has recently held, discrimination aimed at compelling obedience to union rules (in this case the job-rotation principle) encourages membership in a labor organization no less than discrimination designed to combat dual unionism.¹¹ For these reasons, and upon the record as a whole, we find, as did the Trial Examiner, that the Respondent violated Section 8 (b) (2) of the Act, in that it attempted to and did cause H. A. Bull Steamship Company to discriminate against Fowler in violation of Section 8 (a) (3) of the Act, and that the Respondent also thereby violated Section 8 (b) (1) (A) thereof. We reject, for the reasons set forth in *National Union of Marine Cooks and Stewards, CIO, and George C. Quinley an individual, supra*, the Respondent's further contention that no 8 (b) (2) finding can be made because the employer was not joined as a party.

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2. In its brief the Respondent asserts that the record requires a finding that Fowler incurred a wilful loss of earnings after March 2 and after April 26. As the parties agreed at the hearing that this issue had not been fully litigated, we shall make no determination now on this matter, but instead defer it to the compliance stage of this proceeding.

ORDER

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as

¹⁰ See, *National Union of Marine Cooks and Stewards, CIO, and George C. Quinley, an individual*, 92 NLRB No. 147, and *Ambassador Venetian Blind Workers' Union, Local No. 2565, affiliated with the United Brotherhood of Carpenters and Joiners of America, AFL, and Viola Dodd, an individual*, 92 NLRB No. 148, as distinguished from *Denver Building and Construction Trades Council, et al. (Henry Shore)*, 90 NLRB No. 223.

¹¹ *American Pipe and Steel Company*, 93 NLRB No. 11.

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amended, the National Labor Relations Board hereby orders that the Respondent, The Radio Officers' Union of the Commercial Telegraphers Union, AFL, and its agents, shall:

1. Cease and desist from:

(a) Causing or attempting to cause A. H. Bull Steamship Company, its successors and assigns, to discriminate against Willard Christian Fowler or any other employee in violation of Section 8 (a) (3) of the Act; and

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(b) Restraining or coercing employees or prospective employees of A. H. Bull Steamship Company, its successors and assigns, in the exercise of their right to refrain from any or all of the concerted activities listed in Section 7 of the Act, except to the extent that such right may be affected by the proviso to Section 8 (b) (1) (A), or by an agreement requiring membership in the Respondent as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

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(a) Notify A. H. Bull Steamship Company in writing that it withdraws any objection to the employment of Willard Christian Fowler and requests it to offer him immediate employment;

(b) Notify Willard Christian Fowler that it has advised A. H. Bull Steamship Company that it withdraws its objection to his employment and requests it to offer him immediate employment;

(c) Make whole Willard Christian Fowler in the manner set forth in the Intermediate Report in the section entitled "The remedy";

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(d) Post at its office in New York City copies of the notice attached hereto and marked Appendix A.¹² Copies of said notice, to be furnished by the Regional Director for the Second Region, shall, after being duly signed by the Respondent's representative, be posted by it immediately upon receipt thereof and be maintained by it for a period of at least sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that such notices are not altered, defaced, or covered by any other material;

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(e) Mail to the Regional Director for the Second Region signed copies of the notice attached hereto as Appendix A for posting, the Employer willing, at the office and docks of A. H. Bull Steamship Company, in places where notices to employees are customarily posted. Copies of said notice, to be furnished by the Regional Director for the Second Region, shall, after being signed as provided in paragraph 2 (d) above, be forthwith returned to said Regional Director for said posting;

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(f) Notify the Regional Director for the Second Region in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith.

Signed at Washington, D. C.

Paul M. Herzog, Chairman

John M. Houston, Member

James J. Reynolds, Jr., Member

Paul L. Styles, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

¹² In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be inserted before the words, "Decision and Order," the words, "Decree of the United States Court of Appeals Enforcing."

ABE MURDOCK, MEMBER, *dissenting*:

I cannot concur with the conclusions reached by the majority in this case that the Respondent Union's conduct violated Section 8 (b) (1) (A) and Section 8 (b) (2) of the amended Act. Careful consideration of the record, in my opinion, compels the contrary finding that the Respondent was contractually empowered to refuse clearance to complainant Fowler, without violating the Act, and that in any event, Fowler was not a member in good standing of the Respondent at the time of the initial refusal of clearance.

The majority of my colleagues and the Trial Examiner found the facts in this case, briefly stated, to be as follows. On February 27, 1948, complainant Fowler was offered a position as radio officer by the Bull Steamship line on its ship, the *S. S. Frances*. Fowler was, at this time, a member in good standing of the Respondent. In order that a vacancy in the position of radio officer on the *Frances* might exist, however, it was necessary for the Company to discharge another member of the Respondent who was currently employed in that job. Upon complaint of the displaced member, Howe, the secretary-treasurer of the Respondent thereupon suspended Fowler for "bumping" another member and a subsequent request by the Company for clearance of Fowler for the position was denied by the Respondent. The suspension of Fowler was later lifted, but, when, on April 26, the Company again offered Fowler employment as a radio officer on its vessel, the *S. S. Evelyn*, clearance was once more refused by Respondent. As a consequence of the refusal to grant the clearances, the positions, in both instances were filled by other members of the Respondent. Admittedly, in both instances, negotiations for employment of Fowler were carried on by the

latter and the Company without reference to the Respondent other than the requests for clearance. The Respondent therefore contends that its actions were in accord with, and protected by, the terms of its contract with the Company and the "hiring hall" operated in conjunction with that agreement. I find the Respondent's argument persuasive.

There seems no question that, if the contract between the Respondent and the Company during the period concerned herein provided for employment of radio officers only through a union hiring hall, the denial of the clearances by the Respondent was both justified and protected under the terms of the amended Act.¹³ My disagreement with my colleagues, accordingly, centers upon the question of the existence of a hiring hall provision in that agreement. The record is clear, and indeed the Trial Examiner finds, that the various steamship companies, including the Bull line, who were parties to the contract, "generally requested the Respondent to furnish radio officers to fill vacancies." Further, "to meet these requests, the Respondent maintained a 'shipping list' of its unemployed members in the order of the termination of their last employment" and when a vacancy occurred, it was filled by offering the assignment and the requisite clearance to members of the Respondent on the shipping list in the order occurring there.¹⁴ Despite this clear showing of the existence and operation of a hiring hall, however, the Trial Examiner and the majority opinion contend such an arrangement

¹³ Under the provisions of Section 102 of the amended Act, the legality of such a restricted hiring procedure was protected for a stated period.

¹⁴ While exceptions to this procedure occurred, they were apparently rare and were reluctantly consented to by the Respondent.

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is without provision in the contract between the parties and is thus unavailable to the Respondent as a defense. This conclusion, in direct contradiction of the established facts, is reached in view of a purported lack of a clear hiring hall provision in the agreement, the reservation of the right of "free selection" of employees by the companies, and the inclusion of a clause providing for written notice by the Union where a selected member was not in good standing. I cannot agree.

The pertinent portions of the contract, as set forth in the Trial Examiner's Report, do not, by name refer to the establishment of a hiring hall for the employment of radio officers. To this extent the argument of the majority is well taken. In its previous decisions dealing with "hiring halls" in the maritime industry, however, the Board has never made such a condition prerequisite to finding the existence of such systems, and has, indeed, recognized the existence of hiring halls where the contracts did not establish them in name.¹⁵ Nor does the reservation of a right of free selection by the companies necessarily controvert the existence of a hiring hall.¹⁶ While the inclusion of this clause, as argued by the Trial Examiner and the majority of the Board, conceivably negates the inference that a hiring hall was created by the contract, it is equally interpretable as merely protecting the right of the companies

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¹⁵ See footnote 6, *supra*: It should be further noted that in *National Maritime Union of America*, 82 NLRB 1365 at 1375, 1376, the Board regarded a contract stating, "The Company agrees that during the period this agreement is in effect all employment, except for the positions set forth in subsection (g), will be given to members of the Union when available in the Deck, Engine, and Stewards' Departments, provided that the prospective employees are satisfactory to the Company," as contemplating a hiring hall procedure.

¹⁶ See footnote 2, *supra*.

to reject unsuitable applicants for radio officer positions. As the Trial Examiner, at the hearing, excluded oral evidence as to the meaning of this term, among others, as interpreted by the parties, the precise effect of the language cannot be determined. On the other hand, the incontrovertible fact is that such "free selection" considered granted in the contract by my colleagues, was never utilized by the companies to that effect, nor was there any attempt to do so. Its abstract existence is accordingly rebutted by the realities of the factual situation before us. Furthermore, the requirement of "clearance" by the Respondent, a term the parties clearly indicated to be of special weight, before a free selection of applicants could be effected, is incompatible with the meaning attributed to the latter clause by the majority opinion. Finally, the reasoning of my colleagues that no occasion for written notice by the Respondent that any particular employee was not in good standing would arise unless the Company hired radio officers directly, misreads the clause in question.¹⁷

Upon the entire record, and in view of the foregoing, I am persuaded and would find that a lawful hiring hall was established by the contract in question. Accordingly, as the actions of the Respondent herein were in accord with that contract, I would dismiss the complaint in its en-

¹⁷ This clause does not refer to hiring alone, but also contemplates action taken in transferring or promoting employees. In these instances, it is clear, there would be ample reason for written notice by the Respondent if the recipient of the transfer or promotion was not in good standing. There is, therefore, no reason for assuming that the provision is inconsistent with a hiring hall. Moreover, as the majority opinion admits, the Trial Examiner's conclusion that no occasion for a twenty-four hour notice to the Respondent before the companies hired nonmembers would arise until, and unless, the companies had first directly and unsuccessfully sought to hire members of the Respondent is clearly erroneous.

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tirety. Assuming arguendo, however, the correctness of the majority position that no hiring hall existed in this instance, I believe the record further establishes that the Respondent was not guilty of infringement of the Act with respect to the refusal of a clearance to complainant Fowler on February 27. While it is agreed that Fowler was suspended by the Respondent's secretary-treasurer on February 27, and was, thus, presumptively not in good standing as required by the contract, these undenied facts are again evaded by the reasoning of the Trial Examiner and the majority opinion. It is contended, in this regard, that the suspension of Fowler by Howe was in derogation of the rights and procedures set forth in the constitution and bylaws of the Respondent. I find this reasoning unsupported by the record as well as without precedent in the Board's decision.

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It would seem patent that the sole qualified judge of the good standing of a member of a labor organization is that organization itself acting through its elected officers. I find no cogent reason for this Board to usurp the position of judge in those matters nor has this Board done so in the past.¹⁸ The Trial Examiner found, and the majority opinion agrees, that the suspension of Fowler by Howe was without authority on the part of Howe and was consummated without reference to the provision of the Respondent's bylaws for warning to an offender and con-

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¹⁸ I cannot agree with my colleagues that the *Pressed Steel* case, footnote 8, *supra*, serves as precedent for the action taken herein. In that instance, the provisions of the union constitution examined by the Board had been incorporated by reference into the agreement relied upon as a basis for the discharge. The union determination of "good standing," accordingly, was to that extent, a matter of contract clearly open for examination.

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tinuation of the offense. The bylaws, however, clearly authorize the secretary-treasurer, in the absence of the general chairman and the general committee, to take suspension action against a member of the Respondent.¹⁹ There is no affirmative showing in this record that these conditions were not met or that there were not repeated warnings to Respondent's members against "bumping" activities such as engaged upon herein by Fowler. Not only was there a complete lack of protest by Fowler that his rights had been abridged but the record lacks evidence other than mere supposition to show that the Respondent's rules were ignored. In basing their conclusion as to the illegality of the suspension on these grounds, the majority forces this Board into the new and untenable position of becoming the arbiter of proper observance of intraunion procedure. The impracticality of such a policy is self evident. In the present case, for example, it requires a Board determination as to the type and sufficiency of notice contemplated by the Respondent's bylaws—a task we are unqualified to assume and have no proper basis for deciding.²⁰ I do not believe the Act contemplated this Board as becoming an appellate court for adjudication of the minutiae of Robert's Rules of Order, when adopted by a labor organization.

¹⁹ Article 9, Section 12, of the Respondent's bylaws provide, in substance, that when the general committee is unable to act, its duties, including that of suspension, devolve upon the general chairman and the general secretary-treasurer. Article 7, Section 7, in turn, authorizes the secretary-treasurer to act as general chairman in the absence of the latter.

²⁰ The ramifications of such extended inquiry into union rules are far flung. It is entirely possible that the Board, in some future case, may be asked, on the basis of this decision, to determine the existence of a quorum at a particular union meeting or the validity of certain parliamentary procedure.

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Accordingly, as I can find no ground upon which to overturn the conclusion that Fowler was not in good standing at the time his clearance was refused in February, 1948, and as good standing was a contractual prerequisite to the granting of a clearance by the Respondent, I would find that Respondent's actions on that date were not in violation of the amended Act.

Signed at Washington, D. C.

Abe Murdock, Member
NATIONAL LABOR RELATIONS BOARD

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APPENDIX A

NOTICE

TO ALL MEMBERS OF THE RADIO OFFICERS' UNION OF THE COMMERCIAL TELEGRAPHERS UNION, AFL, AND TO ALL EMPLOYEES AND PROSPECTIVE EMPLOYEES OF THE A. H. BULL STEAMSHIP COMPANY

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PURSUANT TO

A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT cause or attempt to cause A. H. BULL STEAMSHIP COMPANY or its successors and assigns, to discriminate against Willard Christian Fowler or any other employee or prospective employee in violation of Section 8 (a) (3) of the Act.

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WE WILL NOT restrain or coerce employees or prospective employees of the A. H. BULL STEAMSHIP COMPANY, its successors or assigns, in their exercise of the right to refrain from any or all of the concerted activities listed in Section 7 of the Act, except to the extent that such right may be affected by the proviso in Section 8 (b) (1) (A) of the Act, or by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

Appendix A Attached to Decision and Order

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WE WILL notify in writing the A. H. BULL STEAMSHIP COMPANY that we withdraw our objections to the employment by it of Willard Christian Fowler and request it to offer him employment as a radio officer.

WE WILL notify Willard Christian Fowler that we have advised A. H. BULL STEAMSHIP COMPANY that we withdraw our objections to his employment and that we request it to offer him employment as a radio officer.

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WE WILL make Willard Christian Fowler whole for any loss of pay suffered by him as the result of our having prevented his hire by A. H. BULL STEAMSHIP COMPANY.

THE RADIO OFFICERS' UNION OF THE
COMMERCIAL TELEGRAPHERS UNION, AFL
(Union)

Dated _____ By _____
(Representative) (Title)

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This notice must remain posted for sixty (60) days from the date of posting and must not be altered, defaced, or covered by any other material.

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Intermediate Report and Recommended Order

IR-208

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
DIVISION OF TRIAL EXAMINERS
WASHINGTON, D. C.

Case No. 2-CB-91

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In the Matter of
THE RADIO OFFICERS' UNION OF THE COMMERCIAL
TELEGRAPHERS UNION, AFL

and

WILLARD CHRISTIAN FOWLER, an individual

Mr. Oscar Geltman, for the General Counsel.

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Butter and Silverman, by *Mr. Abner H. Silverman*, of
New York, N. Y., for the Respondent.

Statement of the Case

Upon a charge filed June 18, 1948, by Willard Christian Fowler, an individual, the General Counsel for the National Labor Relations Board,¹ by the Regional Director for the Second Region (New York, New York), issued a

¹ The General Counsel and the staff-attorney appearing for him at the hearing are herein referred to as the General Counsel; the National Labor Relations Board is referred to as the Board.

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complaint dated March 2, 1950, alleging that the Radio Officers' Union of the Commercial Telegraphers Union, AFL, herein called the Respondent, had engaged and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (b) (1) (A), Section 8 (b) (2), and Section 2 (6) and (7) of the National Labor Relations Act, as amended,² herein referred to as the Amended Act. Copies of the complaint and the charge were duly served upon the Respondent and Willard Christian Fowler.

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With respect to the unfair labor practices, the complaint as amended at the hearing, alleges in substance: (1) that the Respondent is a labor organization within the meaning of the Amended Act; (2) that, in violation of Section 8 (b) (2) of the Amended Act, the Respondent on or about February 27, 1948, and also April 26, 1948, caused and/or attempted to cause the A. H. Bull Steamship Company (herein called the Company), to discriminate against Fowler, a prospective employee, in regard to hire or tenure of employment and other terms or conditions of employment, by demanding and requiring that the Company withdraw offers of employment which it had made to Fowler and by demanding and requiring that Fowler be refused employment by the Company; and (3) that, by these acts, the Respondent, in violation of Section 8 (b) (1) (A) of the Amended Act, also restrained and coerced employees or prospective employees of the Company in the exercise of the rights guaranteed by the Amended Act.

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The Respondent filed an answer in which it denied the commission of the unfair labor practices alleged in the

² 61 Stat. 136.

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complaint, and, upon the amendment of the complaint at the hearing, amended its answer to deny the allegations of the amended complaint concerning the unfair labor practices.

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Pursuant to notice, a hearing was held in New York City on April 3, 10, and 11, 1950, before the undersigned Trial Examiner duly designated by the Chief Trial Examiner. The General Counsel and the Respondent participated in the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues.

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On the first day of the hearing and before any evidence was received, the undersigned granted a motion made by the General Counsel and opposed by the Respondent, to amend the complaint, which alleged the Respondent's commission of unfair labor practices on April 26, 1948, by adding allegations that the Respondent had also committed similar unfair labor practices on February 27, 1948.³ The undersigned thereupon also denied a motion made by the Respondent and opposed by the General Counsel, for "a few weeks" adjournment. However, upon the renewal of this motion by the Respondent at the close of the first day of the hearing (April 3), during which Fowler was the only witness, the undersigned granted a recess until April 10, 1950. The hearing was accordingly resumed on April 10 with further cross-examination of Fowler by counsel for the Respondent.

At the conclusion of the General Counsel's case, the undersigned denied the Respondent's motion to dismiss

³ The charge had included the alleged unfair labor practices on February 27 as well as those on April 26. Notice of the motion to amend the complaint had been served on the Respondent on March 31, 1950.

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the complaint on the ground that the evidence failed to sustain the allegations of the complaint. At the conclusion of the hearing, the Respondent renewed its motion to dismiss the complaint and the undersigned reserved decision. The motion is now disposed of in accordance with the considerations hereinafter set forth.

Before the hearing was closed, the General Counsel and the Respondent orally presented argument upon the issues. Since that time, the undersigned has received a brief from each of them.

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Upon the entire record in the case and from his observation of the witnesses, the undersigned makes the following:

Findings of Fact

I. The business of the Company

A. H. Bull Steamship Company, a New Jersey corporation with its principal office in New York City, is engaged in the operation of its own and chartered vessels for the water-carriage of cargo between States of the United States and between the United States and foreign countries. In 1948 and 1949, it operated an average of 23 vessels, and in each of these years, it transported articles and commodities of a value of more than \$5,000,000, in interstate and foreign commerce.

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The undersigned finds that the Company is engaged in commerce within the meaning of the Amended Act.

II. The Respondent

The Radio Officers' Union of the Commercial Telegraphers Union, AFL, is a labor organization within the meaning of Section 2 (5) of the Amended Act.

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III. The unfair labor practices

A. *The contract and the general practices
in connection with hiring*

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On January 11, 1947, the Respondent and various steamship companies, including the A. H. Bull Steamship Company, (herein called the Company), entered into a "Standard Dry Cargo and Passenger Ship Agreement" covering the companies' radio officers. It is undisputed that on this date, and also on August 16, 1947, the Respondent was designated as bargaining representative by a majority of the Company's radio officers, who constituted an appropriate unit for the purposes of collective bargaining. On August 16, 1947, the Respondent and the Company executed an agreement by which they extended the term of the general contract until August 15, 1948.

Among other things, the contract as thus extended, provided:

Article I—Employment

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Section 1. The Company agrees when vacancies occur necessitating the employment of Radio Officers, to select such Radio Officers who are members of the Union in good standing, when available, on vessels covered by this Agreement, provided such members are in the opinion of the Company qualified to fill such vacancies.

• • • • •

Section 3. When a member of the Union in good standing qualified to fill the vacancy is not available, the Company will notify the Union twenty-four (24) hours in advance before a non-member of the Union is hired, and give the Union an opportunity to furnish

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without causing a delay in the scheduled departure of the vessel a competent and reliable Radio Officer with the license necessary for the position to be filled.

• • • • •

Section 6. The Company shall have the right of free selection of all its Radio Officers and when members of the Union are transferred, promoted, or hired the Company agrees to take appropriate measures to assure that such members are in good standing, and the Union agrees to grant all members of the Union in good standing the necessary "clearance" for the position to which the Radio Officer has been assigned. If a member is not in good standing, the Union will so notify the Company in writing.

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Although the contract contained no reference to a hiring-hall arrangement, the companies generally requested the Respondent to furnish radio officers to fill vacancies. To meet these requests, the Respondent maintained a "shipping list" of its unemployed members in the order of the termination of their last employment. When a request for a radio officer was received from a company, the Respondent offered the assignment and requisite clearance to those of its unemployed members who were waiting for assignments in the Respondent's office, in the order in which their names appeared on the "shipping list." If a company's request were made appreciably in advance of the time the berth was to be filled, the Respondent through its secretary-treasurer, might advise an unemployed member who was high on the list to appear at the Respondent's office when the assignment was to be made. Otherwise, the assignments and clearances were given

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without previous announcement, to the longest unemployed member who happened to be in the Respondent's office waiting for a job.

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While this appears to have been the general practice, Fred Howe, the Respondent's secretary-treasurer testified that on some few occasions, companies have asked that particular radio officers be assigned to them. In some of these instances, the Respondent refused the requests; in other instances, the Respondent honored the requests although, as Howe put it, "Some of the members don't think too much of that system."

B. The February incident

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The claimant, Willard Christian Fowler, became a member of the Respondent on July 1, 1942, and continued to be a member throughout the events in February and April 1948, upon which the present case is based. From July 30, 1943 until January 2, 1948, he was continuously employed by the Company on three different ships. When he signed off the third ship on January 2, 1948 at New York City, the Company's headquarters, he returned to his home in Miami, Florida.

On December 29, 1947, Alexander Kozel, another member of the Respondent, was hired by the Company at New Orleans as radio officer of the *S. S. Frances*, to replace Radio Officer Lopez, who had fallen ill while the ship was in that port. On February 24, 1948, after the *Frances* had reached New York City at the end of its voyage, Robert H. Frey, the Company's radio supervisor, told Kozel that, although his services had been satisfactory, he was to be replaced by "a man with senior service in the company."

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On the same day, February 24, 1948, Frey telegraphed Fowler in Miami to "Proceed New York as soon as possible for position SS Frances." After verifying this offer by a long distance telephone call to Frey, Fowler came to New York City by airplane on Wednesday, February 25.

On Thursday, February 26, Fowler went to the Respondent's New York City office to pick up his mail. Although he then saw Secretary Howe of the Respondent, he did not speak to him since Howe was busy.

From the Respondent's office, Fowler went to the SS *Frances* at its berth in Brooklyn where he met Kozel on the ship. He told Kozel that he was "supposed to take the ship," as its radio officer, but in answer to Kozel's question, admitted that he did not have a clearance from the Respondent. Kozel replied, "Well, I am just packing my bags. But what does the Union say about it?" Explaining that he had not known that there was a radio officer on the ship, Fowler suggested that Kozel stay aboard, adding, "We will just wait until tomorrow and let you straighten it out with the Union. If you are going to stay on the ship, there is no sense in me sticking around. I will just forget about it." Fowler accordingly left the ship and went back to his hotel.

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On the following day, Friday, February 27, Fowler returned to the ship. Kozel had left with his baggage, and Fowler stayed on the ship, cleaning and checking up on spare parts.

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In the meantime, Kozel visited Secretary Howe of the Respondent and reported what had happened. At about 3 o'clock on Friday, Howe sent a telegram to Fowler on board the *Frances* and another telegram to Vice-president Kiggins of the Company.

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In his telegram to Fowler, Howe said:

You are hereby suspended from membership in the Radio Officers Union on grounds that you neglected to obtain clearance for your present job, also for depriving another member of his job stop Local Office of Seafarers International Union and Harry Lundeborg being notified of this action You may be reinstated to membership by complying with rules of this Union.

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Howe's telegram to Vice-president Kiggins of the Company was the following:

This is to inform you that Willard C. Fowler is not in good standing in this organization on grounds that forcing another member out of employment is strictly against Union bylaws stop I again quote provisions of our agreement requiring a clearance for all such job (*sic*) Seafarers International Union local office and Harry Lundeborg being notified.

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In justification of Howe's power as the Respondent's secretary-treasurer to suspend Fowler's membership by sending him this telegram, counsel for the Respondent points to the provisions of the Respondent's bylaws which authorize the Respondent's secretary-treasurer to act as General Chairman in all absences of the latter,* and which thus entrusts to the secretary-treasurer the following specific powers and duties of the General Chairman in connection with suspensions from membership:

* Article 7, Sec. 7.

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(1) Article 7, Sec. 1—to “see that the Constitution of the [Commercial Telegraphers’ Union], the by-laws, contracts and agreements of the [Respondent] are strictly enforced and adhered to, and . . . [to] call to account any officer or member violating these laws, contracts or agreements.”

(2) Article 7, Sec. 3—“with the consent of the General Committee, [to] suspend immediately any officer or member of the [Respondent], whose activities are such that the reputation and best interests of the [Respondent] are endangered, but such suspensions shall not deprive the officer or member of his rights as a member. The basis of such suspension shall, within thirty days, be prepared in the form of charges and served on the accused . . . , and the General Committee shall hear such charges as provided in Article 9, Section 4 of these by-laws.”

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(3) Article 7, Sec. 6—To “interpret the by-laws of the [Respondent], and the [Commercial Telegraphers’ Union’s] Constitution on behalf of the [Respondent] with final decision resting with the International President of the [Commercial Telegraphers’ Union].”

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(4) Article 17, Sec. 1—“Any member violating the by-laws of the [Respondent], the [Commercial Telegraphers’ Union’s] Constitution, the contracts and agreements held by the [Respondent], and in any way contributing to the lessening of respect for the laws, rules, contracts, and agreements of the [Respondent], and the good name

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of the [Respondent], shall first be advised by the Officer of the [Respondent] first having knowledge of the foregoing to correct his dereliction, and if such is persisted in and not abated, the member shall be immediately suspended by the General Chairman and have charges against him as provided in Article 7, Section 3 of these by-laws."

149 Upon receiving Howe's telegram, Fowler telephoned the Company's office late on Friday afternoon, and since Frey was not there, left word that Frey was to call him. As a result, Frey visited Fowler on the ship on Saturday morning, February 28, and Fowler showed him the telegram from Howe. At Frey's request, Fowler showed him his card from the Respondent which indicated that his dues were paid up. He also told Frey that Kozel had left the ship, but added, "If there is going to be any trouble over this, I will just return to Miami."

150 All of the findings of fact up to this point have been made upon uncontradicted evidence. It is also undisputed that neither Fowler nor Kozel thereafter served as the radio officer on the *Frances*, but that the berth was given to another member of the Respondent by the name of Miller on a "clearance" issued by Howe on Tuesday, March 2. How this came about, however, is a matter of dispute, for there are conflicts in the testimony as to relevant conversations between Howe and Frey and between Howe and Fowler, which occurred after Howe had dispatched the telegrams to Fowler and the Company on Friday, February 27, and before the Company accepted Miller as the radio officer for the *Frances* on Tuesday, March 2.

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Frey testified that he had two telephone conversations with Howe, the first on a call from Howe late Friday afternoon in which Howe accused him of "trying to run [his] own union" by replacing Kozel with Fowler, and the second on a call made by Frey to Howe on Saturday afternoon, in which Frey asked for a "clearance" for Fowler on the *Frances* since Kozel had left the ship and upon Howe's refusal, then said to Howe, "Very well. Send me another man."

Howe denied that he had any conversations with Frey in this matter or that he was asked by anybody for a "clearance" for Fowler. He testified that on Friday afternoon, February 27, he did receive a call from Williams, the Company's Captain of the Port, who upon being informed by Howe that Frey and Fowler were trying to "bump" Kozel, asked Howe to hold the matter in abeyance until Monday. According to Howe's testimony, he received a telephone call on Monday from either Captain Williams or Company Vice-president Kiggins telling him "to go ahead and fill the job." It was upon this request, according to Howe, that he gave the clearance for the job to Miller on Tuesday, March 2.

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Fowler and Howe both testified concerning two conversations between them, the first on a telephone call from Fowler to Howe, and the second in Howe's office. Howe testified, however, that both of these conversations took place on Friday afternoon, February 27, after Fowler's receipt of Howe's telegram, while Fowler testified that he made the telephone call on Saturday afternoon, and the visit to Howe's office on the following Monday morning, March 1.

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Howe testified that in the telephone call, Fowler asked to see him and that in the resulting conversation in his office a short time later, Fowler told him that he wanted to work for the Bull Line, and that Howe then said there was no objection to Fowler's working for the Bull Line, but that there was no vacancy on a Bull Line ship "at the moment" since "Kozel [was] on the ship," and that neither Fowler nor anyone else would be allowed to "bump a man." Howe further testified that in this conversation,

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Fowler agreed with Howe's argument that jobs with other steamship lines were equally acceptable but finally said that he would return to his home in Miami without taking any job. According to Howe, he then lifted Fowler's suspension, and, since he did not see or hear from Fowler again, he assumed that he had gone back to Miami.

Fowler, on the other hand, testified that in his telephone call to Howe, which he says was made on Saturday morning, he asked Howe for a "clearance" for the *Frances*, and that Howe said he would not be given any clearances in the future for the *Frances* or for any other ship of the Company because he had tried to steal jobs from other members of the Respondent. Fowler further testified that in his conversation with Howe in the latter's office on Monday, March 1, Howe berated him for "trying to break the union" by going to the *Frances* without first getting a "clearance," and by thus knocking another member out of a job; that Howe told him that, "as far as the Bull Line is concerned, you are through"; and that Howe finally suggested that Fowler, "to straighten [himself] out," might take other available jobs, whereupon Fowler replied, "Well, there has been a big misunderstanding and I seem to be right in the middle of it. In that case,

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I will go back to Miami and forget about the whole thing." According to Fowler, however, he told Howe of his intention to stay on the *Frances* that night and then to leave for home in "a couple of days."

Fowler did stay on the *Frances* that night and consequently met Miller when he reported at the ship the next morning. Fowler testified, and Howe denied, that Fowler telephoned a protest to Howe the same morning because, as he testified he told Howe, Miller had a license which was only a month old,⁵ and that Howe retorted to Fowler "that is no concern of yours so just forget about it."

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The undersigned credits the testimony of Frey and Fowler as to their conversations with Howe and finds specifically (1) that on Saturday afternoon, February 28, Frey in a telephone call to Howe, asked Howe for a clearance for Fowler on the *Frances* since Kozel had left the ship; (2) that Howe refused the clearance and that Frey then asked that another man be sent to fill the job; and (3) that, in a telephone conversation on Saturday, February 28, and again in a conversation in Howe's office on Monday, March 1, Howe told Fowler that he would not be given clearances for the Company's ships because he had tried to "bump" a fellow member and had sought a job directly from the Company without first getting a clearance from the Respondent.

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C. The April incident

In a letter dated March 25, 1948, Secretary Howe acknowledged receipt of Fowler's payment of dues for the

⁵ It appears from the record that Fowler was mistaken as to this, since Miller's license had been renewed a month before.

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second quarter of 1948. In the course of the letter, Howe told Fowler:

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Your name is on the waiting list here for jobs and we shall be pleased to offer you the best we have. I am sure you will enjoy and benefit by a change of companies. Your name will be sufficiently high on the list so that you can obtain a good assignment without waiting for more than a day or two, and this only so you may select the type of ship you desire.

On Thursday, April 22, Fowler returned to New York City and on the following day he telephoned to Frey and told him that he was back in town. Frey said that Fowler should keep in touch with him and that something might turn up in the next few days.

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Fowler testified that he visited Howe at the Respondent's office on Saturday, April 24; that he told Howe he had come to New York in accordance with Howe's letter of March 25; that, although Fowler made no mention of the possibility of getting a job with the Company, Howe said, "We have plenty of jobs available for you but it still stands as far as the Bull Line is concerned; you will be given no clearance for any Bull Line ship"; that Fowler insisted that there was nothing in the Respondent's constitution or bylaws which deprived him of a choice of ship or employer; that Howe replied that that was so "as far as any other company is concerned; but you will be given no clearance for any ships of the Bull Line"; that Howe also said, "Frey has been talking too much to you down there and making a company stiff out of you. I am going to break it up right here and now. All the old Bull Line

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stiffs will not be given any clearance at any future time"; that Fowler told Howe he would be back to the Respondent's office early the following week; and that, before Fowler left the office, Howe called his assistant, Joseph Glynn, into the conversation and said, "I want you to witness the fact that I am offering Mr. Fowler a job." Glynn and Howe denied that they saw Fowler on this occasion or had the conversation just outlined. Howe denied that he saw Fowler at any time during April. The undersigned, however, credits Fowler's testimony and finds specifically that on Saturday, April 24, Howe told Fowler that there were plenty of jobs available for Fowler but that he would receive no clearance for a job on any ship of the Company.

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On Monday morning, April 26, Fowler reported at the Respondent's office and bid for, and received, a clearance from Glynn for a job as radio officer on the *SS Raphael Semmes* of the Waterman Steamship Lines. He told Glynn, however, that he would take a look at the ship. When he did so that morning, he decided not to take the berth.

On the same morning, Monday, April 26, Frey called the Respondent's office by telephone and spoke with Glynn. Frey testified that he asked Glynn whether Fowler was at the Respondent's office or, if not, where he could reach Fowler because he wanted to get a clearance for him as radio officer on the Company's *SS Evelyn*; that Glynn replied that "he would see"; and that this was the full conversation between them. Glynn testified that Frey asked, "Have you seen Fowler around?" and that, upon Glynn's telling him that Fowler had just left for an assignment to a Waterman Lines ship, Frey said, "Oh, I see, Thank you, very much," and hung up. The undersigned credits Frey's testimony concerning this conversation.

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At about noon of the same day, after Fowler had visited the *Raphael Semmes* and decided not to take the berth on that ship, he went to the Company's office and saw Frey, who told him that he had a job for Fowler on the *SS Evelyn* if Fowler could get a clearance from the Respondent.

After leaving Frey's office, Fowler telephoned to Howe. Fowler testified that, by mistake, he addressed Howe as "Mr. Frey"; that Howe said, "You are getting your wires crossed. Fowler, what are you doing at the God damn Bull Line?"; that, upon this unexpected turn to the conversation, Fowler never did tell Howe of Frey's specific job-offer; but that, in an ensuing argument as to whether Fowler was trying to "steal jobs" from other members of the Respondent, Howe said, "As far as I am concerned, you are through," and suggested that Fowler join a rival telegraphers' union in an attempt to get a job. Howe denied that this was the conversation. He testified that Fowler told him that he would like to work for the Bull Line and that Howe replied, "How are you going to work for the Bull Line when I don't have any Bull Line ships today?" The undersigned credits Fowler's testimony concerning this conversation.

Frey testified that late on the same day, Monday, April 26, he had a telephone conversation with Howe, but that he could not recall whether he called Howe or Howe called him as a result of Frey's morning conversation with Glynn. In either event, according to Frey, Howe told him that he would not give Fowler a clearance for the *Evelyn* or for any other ship of the Company, whereupon Frey asked Howe to assign another man. Glynn testified that he received a telephoned request on *Tuesday, April 27*, from either Frey or Captain Williams for the assignment

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of a man to the *Evelyn* and that no mention was made of Fowler. Howe testified that he himself received no request for an assignment to the *Evelyn*, that he knew of the vacancy only through Glynn's report to him, and that he issued a clearance to a radio officer by the name of Paese on the morning of April 27.

The undersigned, however, credits the testimony of Frey that he asked Howe on Monday, April 26, for a clearance for Fowler for the *Evelyn* and that Howe then told him that the Respondent would not clear Fowler for the *Evelyn* or for any other ship of the Company.

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After Howe had thus rejected Frey's request, Fowler called Frey and told him that he could not get a clearance for any of the Company's ships. Frey said he was sorry but that he could not give Fowler the job without an official clearance from the Respondent.

D. Conclusions

1. Summary of the facts

The material facts already found are relatively few but a brief review of their salient elements will afford a clearer view of the problems they present.

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On August 16, 1947, the Company and the Respondent agreed in writing to extend for the period of a year, their existing contract which reserved to the Company "the right of free selection of all its Radio Officers," but also provided for the preferential hiring of members of the Respondent in good standing and for the Respondent's granting all "necessary 'clearances'" to all its members in such standing. Although at times the Respondent honored requests of steamship companies for clearance for the hire

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of specific members of the Respondent, it did so reluctantly, preferring to have the companies notify the Respondent merely of their needs, as most of them did, and to permit the Respondent to select and assign its members to the jobs in the order of their length of unemployment. This "hiring hall" practice, which was generally followed and which the Respondent favored, was not referred to in its contract with the Company.

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On February 24, 1948, and again on April 26, 1948, at which times Fowler was a member of the Respondent in good standing, the Company offered Fowler directly, and Fowler accepted, a job as radio officer on one of the Company's ships, without first informing the Respondent or requesting a clearance. Learning of the February arrangements from Kozel, a member of the Respondent, whom Fowler was to replace, Secretary-treasurer Howe of the Respondent sent telegrams to Fowler and the Company on February 27, notifying them in substance that Fowler had been suspended from membership for violation of the Respondent's rules in neglecting to obtain the clearance necessary under the contract, and in depriving another member of his job. No steps to suspend or expel Fowler from membership were taken in the April incident. During both the February and April incidents, however, Howe, as agent for the Respondent, refused specific requests of the Company on February 28 and April 26, 1948, respectively, for clearances of Fowler, which would have permitted the Company to hire him in accordance with their direct arrangements. As a result, the Company did not hire Fowler, and the jobs were filled by the Respondent's assignment of other members.

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2. The violation of Section 8 (b) (1) (A)
of the Amended Act

Under the Respondent's contract with the Company, the Company was obligated to hire only members of the Respondent in good standing whenever they were available, and the Respondent, in turn, was required "to grant all members in good standing the necessary 'clearance' for the position to which the Radio Officer has been assigned." In view of these provisions and upon the other evidence in the case, the undersigned finds that, by refusing the Company's requests for the necessary clearances for Fowler on February 28 and April 26, 1948, the Respondent prevented, and intended to prevent, the Company's hire of Fowler (1) because it disapproved the selection and direct hire of radio officers by steamship companies and was seeking to establish instead as the exclusive method of hire, the practice under which the companies permitted the Respondent to select and assign its members to jobs in the order of their length of unemployment; and (2) because, in the February incident, Fowler's hire by the Company would have displaced Kozel, another member of the Respondent whose services had been admittedly satisfactory to the Company. The undersigned finds that the Respondent thus blocked Fowler's employment by the Company in order to enforce against him as one of its members, the rules of fair dealing between its members it had prescribed for their mutual benefit.

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Briefly stated, these rules required the Respondent's members to look to the Respondent rather than to the companies for job assignments, and to abstain from seeking or entertaining offers of jobs directly from the companies, particularly when their acceptance would result in the

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"bumping" of fellow members. In their general, common observance of these rules, the Respondent's members have undoubtedly engaged in a form of "concerted activity" for their "mutual aid or protection," which has been protected both by Section 7 of the original National Labor Relations Act (herein referred to as the Wagner Act), and by Section 7 of the Amended Act, which became effective on August 23, 1947.⁶ However, under the Board's interpretation⁷ of Section 7 of the Wagner Act and under the express language of Section 7 of the Amended Act, applicants for employment like Fowler,⁸ as well as employees, have also been protected in the right to refrain from such concerted activities except to the extent that the right to refrain may be affected either by a lawful agreement between an employer and a labor organization requiring membership in the labor organization as a condition of employment, or by the proviso to Section 8 (b) (1) (A) of the Amended Act which preserves "the right

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⁶ The following, full provisions of Section 7 of the Amended Act changed Section 7 of the Wagner Act only by adding the language which is italicized:

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, *and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).*

⁷ *Colonie Fibre Company*, 71 NLRB 354, 355-356, enf'd 163 F. 2d 65 (C. A. 2). A similar view was expressed by Senator Taft in the debates preceding the passage of the Amended Act. 93 Cong. Rec. 7000.

⁸ The rights guaranteed to employees extend also to applicants for employment. *Phelps Dodge Corporation v. N. L. R. B.*, 313 U. S. 177.

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of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein." Therefore, unless justification for its action be found either in the Respondent's contract with the Company or in this statutory proviso, the Respondent by preventing Fowler's hire by the Company, improperly restrained and coerced him in the exercise of a right to refrain from the concerted activities of his fellow union members.

The General Counsel and the Respondent agree, and the undersigned finds, that the already-quoted provisions of this contract for the preferential hiring of members of the Respondent, were valid under the proviso to Section 8 (3) of the Wagner Act and that, having been extended for a year by the parties before the effective date of the Amended Act, their legality and effectiveness were preserved for that period by the savings clause in Section 102 of the Amended Act.⁹

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The contract unquestionably made "membership in good standing" a condition of employment by the Company

⁹ Section 102 reads:

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* * * the provisions of section 8 (a) (3) and section 8 (b) (2) of the National Labor Relations Act as amended by this title shall not make an unfair labor practice the performance of any obligation under a collective bargaining agreement entered into prior to the date of the enactment of this Act, or (in the case of an agreement for a period of not more than one year) entered into on or after such date of enactment, but prior to the effective date of this title, if the performance of such obligation would not have constituted an unfair labor practice under section 8 (3) of the National Labor Relations Act prior to the effective date of this title, unless such agreement was renewed or extended subsequent thereto. (Emphasis supplied.)

See *Public Service Company of Colorado*, 89 NLRB No. 51; *Daniel Hamm Drayage Company, Inc.*, 84 NLRB No. 56.

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whenever members of the Respondent were available for hire. If, therefore, Secretary-Treasurer Howe's purported "suspension" of Fowler's membership on February 27 were effective under the Respondent's by-laws, Fowler would not have been a member in good standing, and the Respondent would have been justified under the contract in refusing the Company's request for a clearance for him during the February incident. The undersigned, however, agrees with the General Counsel that Howe's action did not constitute a valid suspension of Fowler's membership under the Respondent's pertinent by-laws, which have already been quoted. For, according to Article 7, Section 3 of these by-laws, immediate suspension from membership may be effected by the Secretary-Treasurer or the General Chairman only with the consent of the General Committee, which was lacking in the present case. And, according to Article 17, Section 1, suspension without the consent of the General Committee may be ordered only *after* warning to the rule-offender and a continuation by him of his infraction. These elements, too, were absent in the present case. The undersigned concludes that Fowler was not validly suspended from membership and that the Respondent was therefore not justified by the contract in refusing him a clearance in February on the ground that he was not then a member of the Respondent in good standing.

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Nor can there be found in the contract any other basis for justifying the Respondent's refusal to grant Fowler clearances in either the February or the April incident, when Fowler was admittedly a member in good standing. On the contrary, the contract *required* the Respondent to issue these clearances. For it expressly provided that the

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Company was to have "the right of free selection of all its Radio Officers," and that the Respondent was "to grant all members in good standing the necessary 'clearance' for the position to which the Radio Officer has been assigned."

Furthermore, the Respondent's refusals to issue clearances for Fowler were based upon his violation of its rules against "bumping" and direct hire by steamship companies, whereas the contract made "membership in good standing" the only condition of employment by the Company. That the contract did not also condition hire upon selection and assignment by the Respondent, is made clear not only by its reservation to the Company of "the right of free selection," but also by its provision¹⁰ requiring the Company to give the Respondent 24 hours notice of the unavailability of members before hiring a non-member. No occasion for such a notice would arise until, and unless, the Company had first directly and unsuccessfully sought to hire members of the Respondent.

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Upon these circumstances, the undersigned finds that the contract required the Respondent to issue clearances for Fowler as a member in good standing. Certainly it imposed no obligation upon the Company to hire through the Respondent or to permit the Respondent to select its radio officers from among the Respondent's members in accordance with any rule that the Respondent deemed fair as between its competing members. Nor did it create any restriction upon the normal right of the Respondent's members to seek or accept employment directly from the Company. On the contrary, this restriction, which the Respondent enforced against Fowler by withholding clearances

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¹⁰ Article I, Section 3, quoted above at p. 3.

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for him in the present case, was incompatible with the contractually recognized rights of direct hire and acceptance of the Company and the members for whom the Respondent made the contract. It was therefore clearly a rule independently established by the Respondent for the governance of its members, and entirely without sanction or support from the contract. The undersigned therefore concludes that the Respondent was not justified by the contract in refusing clearances for Fowler on February 28 and April 26, 1948, because of his violation of the Respondent's restrictive rules.

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Finally, the undersigned is of the opinion that the Respondent's refusals of clearance for Fowler were not protected by the preservation in the proviso to Section 8 (b) (1) (A) of the Amended Act, of "the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein." This proviso permits a union to enforce whatever rules it may prescribe and thus, incidentally, to require the participation of its members in particular concerted activities, only to the extent that penalties for infractions of the rules may affect "acquisition or retention of membership." It does not, however, reserve to a union the right to enforce its rules concerning the concerted activities of its members by causing an employer to refuse to hire or to discharge an offending member, as the Respondent did in the present case.

Upon the foregoing considerations, the undersigned concludes (1) that, in preventing Fowler's hire by the Company on February 28 and April 26, 1948, because of his acceptance of direct offers of employment in violation of the Respondent's rules, the Respondent caused the Com-

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pany to withdraw its offers, and Fowler to lose the employment; (2) that the Respondent thereby penalized Fowler for his refusal to engage in the concerted activities which the Respondent had prescribed for its members; (3) that neither the contract between the Respondent and the Company nor the proviso to Section 8 (b) (1) (A) of the Amended Act justified this conduct of the Respondent; and (4) that the Respondent, in violation of Section 8 (b) (1) (A) of the Amended Act, thereby restrained and coerced the Company's employees and prospective employees (including Fowler) in the exercise of their right under Section 7 of the Amended Act to refrain from engaging in the concerted activities prescribed by the Respondent's rules.

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3. The violation of Section 8 (b) (2)
of the Amended Act

There remains for consideration the question of whether, as the complaint alleges, the Respondent violated Section 8 (b) (2) as well as Section 8 (b) (1) (A) of the Amended Act.

The portion of Section 8 (b) (2), upon which the General Counsel relies, makes it an unfair labor practice for a labor organization—

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To cause or attempt to cause an employer to discriminate against an employee in violation of [section 8 (a) (3)] . . .

Section 8 (a) (3) of the Amended Act, to which reference is thus made in Section 8 (b) (2), makes it an unfair labor practice for an employer—

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By discrimination in regard to hire or tenure of employment or any term or condition of employment to *encourage or discourage membership in any labor organization . . .*¹¹ (Emphasis supplied.)

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The undersigned has already found that, by refusing the Company's requests for clearances for Fowler on February 28 and April 26, 1948, the Respondent caused the Company to withdraw its offers of employment which it had made to Fowler. The General Counsel contends that the Respondent, in violation of Section 8 (b) (2) of the Amended Act, thereby caused the Company, as an employer, to violate Section 8 (a) (3) of the Amended Act, by discriminating against Fowler as a prospective employee, in regard to his hire, tenure, and conditions of employment, thereby *encouraging membership* in the Respondent-labor organization. The Respondent, however, argues that the "discrimination" forbidden by both the Wagner Act and the Amended Act, is discrimination based upon membership or nonmembership in a particular union; that no such discrimination appears in the present case; and that, in any event, the acts of the Respondent and the Company *adversely* affecting Fowler cannot be regarded as *encouraging membership* in the Respondent, since Fowler was one of its members.

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Contrary to the first two of these arguments of the Respondent, neither the Wagner Act nor the Amended Act limited its prohibitions to discrimination based upon mem-

¹¹ Both Section 8 (3) of the Wagner Act and Section 8 (a) (3) of the Amended Act contain this identical language. They differ only in their respective provisos dealing with the permissible types of union security contracts and the extent to which such contracts are defenses to charges of discrimination.

bership or nonmembership in a union. The discriminating forbidden was, and is, discrimination "to encourage or discourage membership in any labor organization." Thus, any discrimination in regard to hire, tenure, or the terms or conditions of employment, whether based on membership, nonmembership, or any other ground, is prohibited if it has the effect of encouraging or discouraging membership in a labor organization.

That the Respondent caused the Company to discriminate against Fowler in regard to his hire, is clear. Although the discrimination was not based upon Fowler's membership or nonmembership in any labor organization, it was discrimination against him because he, unlike other members of the Respondent, was refusing to obey the Respondent's rules. If, therefore, this discrimination encouraged membership in the Respondent, the Respondent violated Section 8 (b) (2) of the Amended Act.

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The normal effect of the discrimination against Fowler was to enforce not only his obedience as a member, of such rules as the Respondent might prescribe, but also the obedience of all his fellow members. It thereby strengthened the Respondent both in its control of its members for their general, mutual advantage, and in its dealings with their employers as their representative. It thus encouraged non-members to join it as a strong organization whose favor and help was to be sought and whose opposition was to be avoided. In its effect upon nonmembers alone, it must therefore be regarded as encouraging membership in the Respondent.

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Finally, by its demonstration of the Respondent's strength, the discrimination in the present case also had the normal effect of encouraging Fowler and other mem-

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bers to retain their membership in the Respondent either through fear of the consequences of dropping out of membership or through hope of advantage in staying in.

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Upon these considerations, the undersigned concludes that, by its refusals to issue clearances for Fowler which caused the Company to withdraw its offers of employment on February 28 and April 26, 1948, the Respondent, in violation of Section 8 (b) (2) of the Amended Act, also caused the Company, as an employer, to violate Section 8 (a) (3) of the Amended Act, by discriminating against Fowler as a prospective employee, in regard to his hire, tenure, and conditions of employment, thereby encouraging membership in the Respondent-labor organization.

IV. The effect of the unfair labor practices upon commerce

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The activities of the Respondent, set forth in Section III, above, occurring in connection with the operations of the Company described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The remedy

Since it has been found that the Respondent has engaged in unfair labor practices within the meaning of Section 8 (b) (1) (A) and Section 8 (b) (2) of the Amended Act, the undersigned will recommend that it cease and desist therefrom and take certain affirmative action in order to effectuate the policies of the Amended Act.

The undersigned has found that, in violating both Section 8 (b) (1) (A) and Section 8 (b) (2) of the Amended

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Act, the Respondent objected to, and prevented, the Company's hire of Fowler, thereby causing Fowler to lose employment by the Company. Accordingly, it will be recommended (1) that the Respondent notify the Company in writing, and furnish a copy of the notice to Fowler, that it has withdrawn its objections to the employment of Fowler by the Company and requests the Company to offer Fowler employment as a radio officer; and (2) that the Respondent make Fowler whole for any loss of pay he may have suffered by reason of the Respondent's preventing his hire by the Company on February 28, 1948 and April 26, 1948, according to the following formula:¹²

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Fowler's loss of pay shall be computed on the basis of each separate calendar quarter or portion thereof from February 28, 1948 to the date of the Company's offer of employment to him as a radio officer, or to the date on which the Respondent serves its notice upon the Company of its withdrawal of objections to Fowler's employment, whichever shall first occur. The quarterly periods, hereinafter called "quarters," shall begin with the first day of January, April, July, and October. Loss of pay shall be determined by deducting from a sum equal to that which Fowler would normally have earned for each such quarter or portion thereof, his net earnings,¹³ if any, in other em-

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¹² See *F. W. Woolworth Company*, 90 NLRB No. 41.

¹³ By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by Fowler in connection with obtaining work and working elsewhere than for the Company, which would not have been incurred but for the Respondent's preventing his employment by the Company. See *Crossett Lumber Company*, 8 NLRB 440. Monies received for work performed upon Federal, State, County, municipal, or other work-relief projects shall be considered as earnings. See *Republic Steel Corporation v. N. L. R. B.*, 311 U. S. 7.

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ployment during that period. Earnings in one particular quarter shall have no effect upon the Respondent's liability for any other quarter.

Upon the above findings of fact and upon the entire record in the case, the undersigned makes the following:

Conclusions of Law

- 209 1. A. H. Bull Steamship Company, a New Jersey corporation, is an employer engaged in commerce within the meaning of Section 2 (2), (6), and (7) of the Amended Act.
2. The Respondent, The Radio Officers' Union of the Commercial Telegraphers Union, AFL, is a labor organization within the meaning of Section 2 (5) of the Amended Act.
- 210 3. By restraining and coercing employees and prospective employees in the exercise of a right guaranteed in Section 7 of the Amended Act, the Respondent did engage in and has continued to engage in unfair labor practices within the meaning of Section 8 (b) (1) (A) of the Amended Act.
4. By causing A. H. Bull Steamship Company, an employer, to discriminate against a prospective employee in violation of Section 8 (a) (3) of the Amended Act, the Respondent engaged in, and is engaging in, unfair labor practices within the meaning of Section 8 (b) (2) of the Amended Act.
5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Amended Act.

Intermediate Report and Recommended Order

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RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law, the undersigned hereby recommends that the Respondent, The Radio Officers' Union of the Commercial Telegraphers Union, AFL, its officers and agents, shall:

1. Cease and desist from:

(a) Restraining or coercing employees or prospective employees of A. H. Bull Steamship Company, its successors or assigns, in the exercise of their right to refrain from any or all of the concerted activities listed in Section 7 of the Amended Act, except to the extent that such right may be affected by the proviso to Section 8 (b) (1) (A) or by an agreement requiring membership in the Respondent as a condition of employment as authorized in Section 8 (a) (3) of the Amended Act.

212

(b) Causing or attempting to cause A. H. Bull Steamship Company or any other employer, to discriminate against an employee or prospective employee in violation of Section 8 (a) (3) of the Amended Act.

213

2. Take the following affirmative action, which the undersigned finds will effectuate the policies of the Amended Act:

(a) Notify the A. H. Bull Steamship Company in writing, and furnish a copy to Willard Christian Fowler, that it has withdrawn its objections to the employment of Fowler by the Company and requests the Company to offer Fowler employment as a radio officer.

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Intermediate Report and Recommended Order

(b) Make whole Willard Christian Fowler, in the manner set forth in the section entitled, "The remedy," for any loss of pay he may have suffered as a result of the Respondent's having prevented his hire by the A. H. Bull Steamship Company.

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(c) Post copies of the notice attached to this Report as Appendix A, in conspicuous places at its business office in New York City, where notices to members are customarily posted. Copies of the notice, to be furnished by the Regional Director of the Second Region as the agent of the Board, should be posted by the Respondent immediately upon their receipt, after being duly signed by an official representative of the Respondent, and should be maintained by it for a period of sixty (60) consecutive days thereafter. Reasonable steps should be taken by the Respondent to insure that these notices are not altered, defaced, or covered by any other material.

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(d) Notify the Regional Director for the Second Region in writing within twenty (20) days from the receipt of this Intermediate Report, what steps the Respondent has taken to comply therewith.

It is further recommended that, unless the Respondent shall, within twenty (20) days from the receipt of this Intermediate Report, notify the Regional Director for the Second Region in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the Respondent to take the action aforesaid.

As provided in Section 203.46 of the Rules and Regulations of the National Labor Relations Board, any party may, within twenty (20) days from the date of service of the order transferring the case to the Board, pursuant to Section 203.45 of said Rules and Regulations, file with the

Intermediate Report and Recommended Order

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Board, Washington 25, D. C., an original and six copies of a statement in writing setting forth such exceptions to the Intermediate Report and Recommended Order or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and six copies of a brief in support thereof; and any party may, within the same period, file an original and six copies of a brief in support of the Intermediate Report and Recommended Order. Immediately upon the filing of such statement of exceptions and/or briefs, the party filing the same shall serve a copy thereof upon each of the other parties. Statements of exceptions and briefs shall designate by precise citation the portions of the record relied upon and shall be legibly printed or mimeographed, and if mimeographed shall be double spaced. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.85. As further provided in said Section 203.46 should any party desire permission to argue orally before the Board, request therefor must be made to the Board within ten (10) days from the date of service of the order transferring the case to the Board.

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In the event no Statement of Exceptions is filed as provided by the aforesaid Rules and Regulations, the findings, conclusions, recommendations, and recommended order herein contained shall, as provided in Section 203.48 of said Rules and Regulations, be adopted by the Board and become its findings, conclusions, and order, and all objections thereto shall be deemed waived for all purposes.

Dated at Washington, D. C., this day of July 1950.

(Signed) WILLIAM F. SCHARNIKOW
William F. Scharnikow
Trial Examiner

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APPENDIX A

NOTICE

TO ALL MEMBERS OF THE RADIO OFFICERS' UNION OF THE COMMERCIAL TELEGRAPHERS UNION, AFL, AND TO ALL EMPLOYEES AND PROSPECTIVE EMPLOYEES OF THE A. H. BULL STEAMSHIP COMPANY

221

PURSUANT TO

THE RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

222

WE WILL NOT restrain or coerce employees or prospective employees of the A. H. BULL STEAMSHIP COMPANY, its successors or assigns, in their exercise of the right to refrain from any or all of the concerted activities listed in Section 7 of the Act, except to the extent that such right may be affected by the proviso to Section 8 (b) (1) (A) of the Act, or by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

WE WILL NOT cause or attempt to cause A. H. BULL STEAMSHIP COMPANY or any other employer, to discriminate against an employee or prospective employee in violation of Section 8 (a) (3) of the Act.

*Appendix A Attached to Intermediate Report
and Recommended Order*

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WE WILL notify the A. H. BULL STEAMSHIP COMPANY that we have withdrawn our objections to the employment by it of Willard Christian Fowler and request it to offer him employment as a radio officer.

WE WILL make Willard Christian Fowler whole for any loss of pay suffered by him as the result of our having prevented his hire by the A. H. BULL STEAMSHIP COMPANY.

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THE RADIO OFFICERS' UNION OF THE
COMMERCIAL TELEGRAPHERS UNION,
AFL

Dated By
(Representative) (Title)

225

This notice must remain posted for sixty (60) days from the date of posting and must not be altered, defaced, or covered by any other material.

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**Stenographic Transcript of Testimony at Hearing of
April 3, 1950**

[1] **BEFORE THE
NATIONAL LABOR RELATIONS BOARD
Second Region
Case No. 2-CB-91**

227

**In the Matter of
THE RADIO OFFICERS' UNION OF THE COMMER-
CIAL TELEGRAPHERS UNION, AFL.,
and
WILLARD CHRISTIAN FOWLER, an Individual.**

2 Park Avenue
New York, N. Y.
Monday April 3, 1950

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Before: William F. Scharnikow, Trial Examiner.

Appearances:

Oscar Geltman, Esq., Counsel for General Counsel.

Butter & Silverman, Esqs., 401 Broadway, New York,
N. Y.

By: Abner H. Silverman, Esq., appearing for respond-
ent Union.

Stenographic Transcript of Testimony at Hearing of 229
April 3, 1950

[5] Mr. Geltman: I offer in evidence as General Counsel's Exhibit documents which have been marked for identification as follows:

As Exhibit 1-A, the original charge herein filed June 18, 1948;

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[6] As General Counsel's Exhibit 1-D, the complaint herein issued March 2, 1950;

.

As General Counsel's Exhibit 1-F, the answer of the respondent herein;

.

As General Counsel's Exhibit 1-H, a notice of motion to amend complaint with a copy received by Butter & Silverman endorsed thereon and with an affidavit of service attached thereto showing service upon the respondent herein, both services having been made on March 31, 1950.

I offer these in evidence.

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[7] Trial Examiner Scharnikow: General Counsel's Exhibits for identification 1-A through 1-H are admitted in evidence.

(The documents previously marked General Counsel's Exhibits 1-A, 1-B, 1-C, 1-D, 1-E, 1-F, 1-G, and 1-H for identification were received in evidence.)

Mr. Geltman: At this time I move to amend the complaint as set out in Exhibit 1-H, the amendment being the incorporation of an additional date when a wrong is alleged.

232 *Stenographic Transcript of Testimony at Hearing of
April 3, 1950*

The complaint as originally issued alleged that by events which took place on or about April 26, 1948, the respondent violated certain sections of the National Labor Relations Act.

As amended, the complaint would allege that by two different events, one of which took place on or about February 27, 1948, and also by a separate event which took place on or about April 26, 1948, the respondent violated those same sections.

• • • • •

[9] Mr. Silverman: Mr. Trial Examiner, we oppose the amendment of the complaint.

We particularly oppose it at this time.

• • • • •

[21] Trial Examiner Scharnikow: I have two motions before me: One, a motion to amend the complaint, which you oppose, and then in the event I should permit the amendment to the complaint, a motion for an adjournment.

• • • • •

234 [23] Trial Examiner Scharnikow: I am pretty clear on the motion to amend.

I am going to grant the motion to amend the complaint.

• • • • •

[25] Trial Examiner Scharnikow: At the present time I will deny the motion for adjournment without prejudice to its renewal when, as and if it appears to you that there is concrete indication of any prejudice to you in the continuation of the hearing.

You may proceed.

Mr. Geltman: Although, Mr. Trial Examiner, there is no charge against A. H. Bull Steamship Company, the

*Stenographic Transcript of Testimony at Hearing of
April 3, 1950*

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employer here, whom General Counsel alleges the union caused to refuse to take the charging party as an employee, it will be necessary to show the employer is in interstate commerce for the Board's purposes, and I have spoken to Mr. Silverman and he has agreed [26] that the facts set out in a letter to me dated March 21, 1950 and signed W. A. Kiggins, Jr., vice president of A. H. Bull & Company, are true.

I offer that letter in evidence as General Counsel's Exhibit No. 2.

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(Thereupon the document above-referred to was marked General Counsel's Exhibit No. 2 for identification.)

Trial Examiner Scharnikow: I take it from the statement of counsel the facts in this letter may be regarded as true?

Mr. Silverman: Yes, sir.

Trial Examiner Scharnikow: You have no objection?

Mr. Silverman: No objection.

Trial Examiner Scharnikow: General Counsel's Exhibit 2 is admitted in evidence.

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(The document previously marked General Counsel's Exhibit 2 for identification was received in evidence.)

Mr. Geltman: As to the issue as to whether the respondent is a labor organization, I am confident that Mr. Silverman will so stipulate.

Mr. Silverman: I am prepared to so stipulate.

Trial Examiner Scharnikow: The stipulation is accepted.

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Willard C. Fowler, for Board, Direct

[27] WILLARD C. FOWLER (Board Witness)

Direct Examination:

Q. (By Mr. Geltman) . . .

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Q. Mr. Fowler, you have worked for the A. H. Bull Steamship Company, haven't you? A. Yes, sir.

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Q. How long did you work for them? A. Previous to the February incident, it was from July '43 until January '48.

Q. You mean July 1943 until January 1948? A. That is correct.

Q. What did you do? A. I was a radio operator.

Q. On ships of the company? A. That's right.

Q. On one ship or more than one ship during that period? A. No. I was on three ships during that period.

Q. You might as well tell us the names of the ships. A. The first ship was the Nathaniel Macon; the second ship was the S. S. Marjorie; and the third ship was the S. S. Hilton.

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[28] Q. Did you work for any other companies in between? A. No, sir.

Q. Was that pretty continuous? A. Yes, sir, it was continuous.

Q. What is the last day you worked for the A. H. Bull Steamship Company? A. January 2, 1948.

Q. That was when you left the Hilton? A. That is when I left the Hilton.

Q. You are a licensed radio operator, aren't you? A. That's right.

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Willard C. Fowler, for Board, Direct

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Q. After you left the job on the Hilton, where were you?
A. I went to my home in Miami, Florida.

Mr. Geltman: Mr. Reporter, will you mark this for identification General Counsel's Exhibit 3.

(Thereupon the document above-referred to was marked General Counsel's Exhibit 3 for identification.)

Q. (By Mr. Geltman) Will you look at this paper, please, and tell me what it is?

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[29] A. (Witness examines document.)

This is a telegram I received from the Bull Steamship Company on February the 24th, 1948.

Mr. Geltman: I offer it in evidence.

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Trial Examiner Scharnikow: General Counsel's Exhibit 3 is admitted in evidence.

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(The document previously marked General Counsel's Exhibit 3 for identification was received in evidence.)

Q. After you received this telegram, General Counsel's Exhibit 3, did you communicate with A. H. Bull Steamship Company? A. Yes, that date that I received it, as soon as I received it—the telegram—I called the Bull Steamship Company long distance to verify the telegram and state that I was coming north, that I was available for the job, and that I was coming north to take it.

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Willard C. Fowler, for Board, Direct

Q. Whom did you speak to? A. I spoke to Mr. Frey.

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[30] Q. (By Mr. Geltman) Who is Mr. Frey, Mr. Fowler? A. Mr. Frey is the radio supervisor for the A. H. Bull Steamship Company. He handles the radio—he handles the employment of radio personnel that is given clearance through the union to work on particular ships of the Bull line or any other particular ship of the Bull line.

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Q. Had you received other positions through Mr. Frey? A. Yes, sir.

Q. After you called Mr. Frey, what did you do? A. I—the following day I bought a plane ticket and came north. That was the 25th.

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[31] Mr. Geltman: For the record, may I state that the 24th of February 1948, was a Tuesday, the 25th, of course, Wednesday.

Q. (By Mr. Geltman) That is your testimony, that you left by plane on the 25th; is that right? A. On the 25th, that's right.

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Q. When did you get to New York? A. I arrived late that night on the 25th.

Q. What did you do then? A. When I arrived in New York, I went to a hotel and stayed at the hotel until about 11 o'clock the following morning, which was Thursday.

Q. And then? A. After I left the hotel, about 11 o'clock, I went to the union office to see if I had any mail or—and I had—I knew I had some mail before I left, not from my home but from other points.

Q. When you say the union office, you mean the Radio

Officers' Union office? A. The Radio Officers' Union Office at 1440 Broadway.

Q. Yes? A. And I went into the union office to see—and looked in the mail box.

And I saw Mr. Howe there but he was busy at the time and I didn't stop. I left the office and went back to the hotel.

[32] Q. Who is Mr. Howe? A. Mr. Howe was secretary-treasurer of the Radio Officers' Union.

And from that point I called the Bull Steamship Company to find out the location of the S. S. Francis which they gave me.

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Q. Where was the ship? A. The ship was at Pier 19, Brooklyn.

And when I came on board the ship, I went to the radio room and I found that the operator that had just made the previous voyage was still on the ship.

Q. Did you have any conversation with him? A. Yes. I had a conversation with him.

I says that I was supposed to take the ship.

And he says, "Did you get a clearance?"

And I says, "No, not yet."

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[33] And he says, "Well, I am just packing my bags," he said, "But what does the union say about it?"

"Well," I says, "I don't know." I says, "I didn't know there was even a man on the ship."

Then I asked him, I says, "Are you going to stay on?"

"Well," he says, "I don't know."

I says, "Well, in that case, being I didn't know there was a man on the ship," I says, "You have your bags and so on here," I says, "We will just wait until tomorrow and let you straighten it out with the union", and I says, "If you

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Willard C. Fowler, for Board, Direct

are going to stay on the ship, there is no sense in me sticking around. I will just forget about it."

I says, "They are not going to hire two radio operators."

So, there was some other conversation, didn't amount to anything. The main object was we decided—I told him I was going back to the hotel and that he was to stay on the ship that night.

Q. Did you go back to the ship that following day? A. Yes, I went back to the ship the following day about noon.

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Q. That would be Friday? A. That would be Friday.

Q. Friday, the 27th of February? A. 27th of February.

And when I came on that ship, I went directly to the [34] radio room and the man had taken all his baggage off.

And I went to the mate on watch and asked him if he had any information about the man staying on. And he said, "No," he said, "He said he was leaving and he took all his baggage off.

I don't know what time he took it off, but he said he saw him take it off. And there was no baggage in the radio room or in his quarters at that time. That was about noon Friday.

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Q. Did you go anywhere? Did you stay there? A. I stayed on the ship the rest of the afternoon cleaning up and checking spare parts and so on. And along about—oh, I would say four-thirty, five o'clock, I received a telegram from the Radio Officers' Union.

Mr. Geltman: Mr. Reporter, will you mark this for identification, please?

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 4 for identification.)

Willard C. Fowler, for Board, Direct

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Q. (By Mr. Geltman) Look at this paper marked General Counsel's Exhibit 4 for identification and tell me what that is, please? A. This is the telegram that I received from the Radio Officers' Union signed by Mr. Fred M. Howe. And I received this telegram about four-thirty—between four-thirty and five o'clock that Friday afternoon. [35] That was the 27th.

Mr. Geltman: I offer it in evidence.

Mr. Silverman: No objection.

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Trial Examiner Scharnikow: General Counsel's Exhibit 4 is admitted in evidence.

(The document previously marked General Counsel's Exhibit 4 for identification was received in evidence.)

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[36] Q. (By Mr. Geltman) After you received the telegram, what did you do? A. That day, immediately, I mean within a half an hour, I called the Bull Line office, tried to get in touch with Mr. Frey, but he was not in the office, and I left instructions there for him to call me or get in touch with me as soon as possible.

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Q. Did you see Mr. Frey that day? A. No, sir.

[37] Q. Did you see him the next day? A. Yes. I saw him in the morning at about approximately nine, nine-thirty, the following morning, and I showed him the—

Q. That would be Saturday? A. That is Saturday, yes. I showed him the telegram and he read the telegram over.

Trial Examiner Scharnikow: Which telegram is that now?

The Witness: That is the one dated February—

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Willard C. Fowler, for Board, Direct

Q. (By Mr. Geltman) General Counsel's Exhibit 4; is that right? A. That's right, yes, sir.

And after Mr. Frey read the letter—I mean the telegram—he says, "What is the matter? Aren't you in good standing with the union?"

"Yes," I says, "I am in good standing. I couldn't understand that telegram because the other man had got off."

So he said, after he asked me if I were in good standing, he said, "Show me your card for your dues," which I did.

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So, at that point I called Mr. Howe from the pier telephone.

[38] Q. Had you paid your dues to the Radio Officers' Union for the first quarter of 1948? A. That is right. The receipt is there.

Q. Did you receive a receipt when you paid your dues? A. Yes, sir.

Q. At that time? A. Yes, sir.

Q. I show you this paper and ask you to tell me what that is? A. This is a receipt from the Radio Officers' Union showing that I was in good standing through the first quarter of 1948.

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Q. You mean, showing you had paid your dues? A. Yes.

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[39] Mr. Geltman: I offer this in evidence as General Counsel's Exhibit 5.

(Thereupon the document above referred to was marked General Counsel's Exhibit 5 for identification.)

Mr. Silverman: No objection.

Trial Examiner Scharnikow: General Counsel's Exhibit 5 is admitted in evidence.

Willard C. Fowler, for Board, Direct

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(The document previously marked General Counsel's Exhibit 5 for identification was received in evidence.)

Q. (By Mr. Geltman) You had been a member of Radio Officers' Union, had you not, prior to January of 1948? A. Yes, sir.

Q. For about how long? A. It says on that card.

Q. Does this refresh your recollection? A. From July 1, 1942.

260

[40] Q. When you spoke to Mr. Frey, was there any discussion with respect to the radio officer who had been on the ship?

The Witness: Mr. Frey told me it was his understanding that the operator—that the previous operator was just supposed to make the trip from a port down south to New York on a temporary clearance and that he was supposed to get off as soon as the ship signed off articles in New York.

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[41] Q. (By Mr. Geltman) Let me make myself clear; was there any discussion as to whether or not that radio officer was then on the ship? A. Yes. I told Mr. Frey at that point that the radio officer had left and that he had taken all his baggage off.

Q. When you first saw the radio officer on the ship on Thursday— A. That's right.

Q. (Continuing) —what sort of equipment or what sort of baggage did he have there? A. He had a valise and one or two suitcases.

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Willard C. Fowler, for Board, Direct

Q. Besides the baggage, were there any other things, anything on the wall, any other property, anything else that was apparently the property of this radio officer the first [42] time you went there? A. No. Only his baggage.

Q. Was there any license? A. No. He had taken his license down.

You see, according to law, the radio operator on the ship must post the license on the bulkhead in the radio room but he had taken his license down.

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Q. At least you did not see any license? A. I did not see any license. The frame was there.

Q. That was on Thursday? A. That was on Thursday night.

Q. As of Saturday, you had been in the radio officer's room? A. Yes.

Q. Was there anything whatever left of his baggage? A. No. There was no baggage left on the ship. There was none of his baggage in either the radio room or his quarters.

Did you look? A. Yes. I looked thoroughly. There were no—the baggage had been taken off some time during the morning of Friday.

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Q. I think you testified that after you spoke to Mr. Frey you spoke to Mr. Howe. You telephoned to Mr. Howe, didn't you? A. I called Mr. Howe from a pier telephone.

Q. Was that after you spoke to Mr. Frey? A. That was after I spoke to Mr. Frey.

Q. Tell us what happened. [43] A. I called Mr. Howe on the phone and told him I had received the telegram—that telegram (indicating)—

Q. General Counsel's Exhibit 4? A. That's right. And—

Q. This is the pier telephone where the SS Frances was located? A. That's right.

When I telephoned him I asked him for a clearance for the Frances, and at that point he told me that I would never be given a clearance for any future job for Bull Line ships.

Q. Did he make any reference to the Frances job? A. I asked him for a clearance for the Frances at that point.

Q. What did he say about that job? A. He said, "Absolutely not," that I would not be given any clearances for the Frances or for any Bull Line ships in the future.

Q. Did he say why? A. Yes, he said I was trying to steal jobs from other members of the union.

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And I asked him, I said, "What was his reason for taking that stand, that he had never done it in the past."

And at that point he says, "Well, I don't care to discuss it over the phone," he says, "Suppose you come up to the Radio Officers' Union office and we will discuss it further there."

[44] At that point I told him I was sorry, when I came to New York I didn't even know there was a man on the ship.

He said, "You were in the union offices on Thursday, and—," he says, "Why didn't you come in then and speak to me about a clearance?"

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Q. In the union office? A. In the union office.

He said, "Why didn't you come in and speak about a clearance for the Frances?"

I said, "You were busy at the time and there was no particular rush and I didn't think it was necessary because I had no idea of signing Articles without obtaining a clearance from the union. As a matter of fact, I had no thought in my mind about signing on the Frances."

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Willard C. Fowler, for Board, Direct

Q. On previous occasions, who had given you a clearance from the union on those occasions? A. Mr. Howe.

Q. For particular jobs? [45] For any particular job.

Q. Where did you stay that night? A. Well, after the telephone call Saturday I stayed on the ship.

Q. Did you go to the union? A. No. I made an appointment with Mr. Howe to come down to the union offices early Monday morning. The following Monday morning.

Q. Did you go down— A. Yes, I went the following—

269 Q. (Continuing) —on Monday morning? A. On Monday morning.

Mr. Geltman: That would be March 1, 1948.

Q. (By Mr. Geltman) Tell us as fully as you can what happened when you came to the union. A. Well, I walked in to the union office that morning, Monday morning, and I sat down and showed Mr. Howe the telegram.

And Mr. Howe—

Q. You mean General Counsel's Exhibit 4? [46] That's right.

270 And at that point Mr. Howe lit into me and he says—asked me if I were trying to break the union.

I says, "No, there was nothing like that in my mind."

He says, "Well, what business had you going down to the ship without first obtaining a clearance from the union?"

I said, "As far as me being on the ship was concerned, that had nothing to do with me obtaining clearance. The fact that if I signed on the ship, that I must get clearance from the union before I signed on the ship."

And he says, "Well," he says, "As far as the Bull Line is concerned," he says, "You are through."

Willard C. Fowler, for Board, Direct

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He says, "You and a few more good company men down there," and he mentioned Krause, Lopez, Bernard—

* * * * *

Trial Examiner Scharnikow: What did he say about them?

The Witness: He says, "You and those company men would not—", he says, "—are trying to form their own union."

He says, they would never, he says, "They were going to break it up."

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Q. (By Mr. Geltman) Was that the end of the conversation? How long did it last? A. No. After that, why—when I first went into the union office that morning, Mr. Howe said to me, he says, "If those [47] members in the outer office knew what you did, you would get yourself torn to pieces right now."

Q. To whom was he referring? A. He was referring to me.

Q. You said, "the members in the outer office." In other words, there is an outer office and he was in the inner office? A. There is an outer office and he was in the inner office. And he said, "If they knew the stunt you pulled, you would get yourself torn into pieces."

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And I said, "First of all, what have I done?"

He said, "You have knocked another union man out of a job."

I says, "I haven't signed a clearance; how could I possibly displace the member on the job?"

He says, "To sum up the whole thing, you are through, as far as the Bull Line is concerned."

And he says, "We have plenty of jobs available, and if

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Willard C. Fowler, for Board, Direct

you want to straighten yourself out and take these other jobs," he says, "Why, you can have it," he says, "but as far as the Bull Line is concerned, you will never be given another clearance to work for them again."

So I told him, I says, "Well, there has been a big misunderstanding and I seem to be right in the middle of it," and I says, "In that case I will go back to Miami and forget [48] about the whole thing."

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He says, "There is no sense in going back to Miami now since you come up here; why don't you take one of these other jobs?"

I says, "No. Forget about it. I will go back to Miami and let the whole matter drop."

And then the conversation turned to a more friendly basis, and I said, "Can I stay on the ship until I can get reservations back to Miami?"

And he says "Yes."

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Q. Did you stay on the ship that night? A. Yes, sir.

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Q. While you were on the ship either that night or thereafter, did you meet any other radio officer? A. Well, the following morning, about—oh, approximately nine or ten o'clock.

Q. That would be Tuesday morning? A. Tuesday morning.

[49] Q. March the second? A. March the second.

That Tuesday morning another operator came down and he came aboard ship—he came to the radio room and I was in my quarters at the time and he says, "I have been assigned to this ship."

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[50] Q. All right. Did you stay on the ship or did you get off? A. I stayed on the ship until about two o'clock in the afternoon.

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[54] Q. Did you stay in New York after that or did you leave town? A. I left town the following day, March 3.

Q. Where did you go? A. I went back to my home in Miami.

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[56] Q. After you got back to Miami, did you have any contact with the union? A. Well, at a later date I sent Mr. Howe my union dues for the second quarter of 1948.

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Q. Did you receive any reply? A. Yes. I received a letter from him.

Mr. Geltman: Mr. Reporter, mark this for identification General Counsel's Exhibit 6.

(Thereupon the document above referred to was marked General Counsel's Exhibit 6 for identification.)

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Q. (By Mr. Geltman) Will you look at this paper, please, and tell me what it is, referring to General Counsel's Exhibit No. 6 for identification? A. This letter is dated March 25, 1948, so just a day or so prior to this date I wrote Mr. Howe. I had sent him my dues for the second quarter of 1948, and this is the letter he wrote [57] to me in answer to the dues I sent him.

Mr. Geltman: I offer it in evidence.

Mr. Silverman: No objection.

Trial Examiner Scharnikow: General Counsel's Exhibit 6 is admitted in evidence.

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(The document previously marked General Counsel's Exhibit 6 for identification was received in evidence.)

Mr. Geltman: Mr. Reporter, will you mark these for identification, please, as General Counsel's Exhibits 7-A and 7-B?

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(Thereupon the documents above referred were marked General Counsel's Exhibits Nos. 7-A and 7-B for identification.)

Q. (By Mr. Geltman) I show you these papers marked for identification as General Counsel's Exhibits 7-A and 7-B and ask you what they are. A. These two papers are union cards. One is a union card showing I am in good standing with the union; and the other is the union dues receipt which I received along with that letter dated March 25.

Q. Did the card also come with that letter? A. Yes, the card and the—

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Q. Both of those papers came with the letter? A. Both of those papers came with the letter.

Mr. Geltman: I offer them in evidence, asking leave to [58] submit a photostat for General Counsel's Exhibit 7-A.

Mr. Silverman: Do I understand that the witness testified both of these came in the letter which has been marked General Counsel's Exhibit 6?

Mr. Geltman: Yes, that is right.

Mr. Silverman: No objection.

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Trial Examiner Scharnikow: General Counsel's Exhibits 7-A and 7-B are admitted in evidence.

(The documents previously marked General Counsel's Exhibits 7-A and 7-B were received in evidence.)

Trial Examiner Scharnikow: That is true: You did get the union card, General Counsel's Exhibit 7-A, in that letter, which is General Counsel's Exhibit 6?

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The Witness: Well, the letter and the two cards both—the three items came in the same letter.

Mr. Geltman: I call attention to the fact that the dues card, General Counsel's Exhibit 7-A says:

"Continuous member since July 1, 1942," and also says, "Good until June 30, 1948, unless revoked."

Q. (By Mr. Geltman) After you got that letter of March 25, did you go back to New York? **A.** Yes. I—

Q. When did you go back?

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[59] **A.** I left Miami April 21, 1948 and arrived in New York the following day.

285

Q. That is, April 22, and that would be a Thursday according to the reverse side of this Government calendar?
A. Yes.

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Q. (By Mr. Geltman) After you arrived, did you communicate with either the A. H. Bull Steamship Company or the Radio Officers' Union? **A.** When I arrived back, I went to a hotel and I called Mr. Frey and I told him I was back in town and I asked him—

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Mr. Silverman: What was the date of this again, please?

The Witness: It was either the afternoon of arrival or the next morning.

Q. (By Mr. Geltman) That would be the 22nd or 23rd?
A. That is right.

Q. Thursday or Friday? A. Thursday or Friday.

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[60] Q. (By Mr. Geltman) What was your conversation with Mr. Frey? A. I told Mr. Frey I was back in town; and I asked him if there was anything doing.

And he says, "Well, keep in touch with me, something might come up in the next couple of days."

Q. After that conversation did you have any contact with the union? A. Yes. I went to the union Saturday morning of that week.

That Saturday—what is that?

Q. That is April 24.

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What happened when you got to the union? A. When I went up to the union, I looked—I went there primarily to see if I had any mail.

And while I was there I had a conversation with Mr. Howe and he said—

I told him, I says, "I came back to New York on the basis of that letter," he had sent me.

Q. Referring to General Counsel's Exhibit 6? A. That is right. The letter was dated—

[61] Q. March 25? A. March 25.

And Mr. Howe says, "Well," he says, "well, we have plenty of jobs available for you but it still stands as far as the Bull Line is concerned: You will be given no clearance for any Bull Line ship."

That was the first word he spoke after I told him I came back to New York on the basis of that letter.

When he says that, I says, "Well, being that I am on top of the rotation hiring list," I says, "I must be or you wouldn't offer me these other jobs," I says, "and the fact that I am a member in good standing there is nothing in the bylaws of the Radio Officers' Union or the constitution of the Commercial Telegraphers Union saying I could not be allowed a choice of ships and companies."

He said, "Well, you are, as far as any other company is concerned; but you will be given no clearance for any ships of the Bull Line."

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It was then he repeated the conversation I had previously with him about being a company man.

He said, "Frey has been talking too much to you down there and making a company stiff out of you," and he says, "I am going to break it up right here and now." He says, "All the old Bull Line stiffs—" or Bull Line Company men—"will not be given any clearance at any future time."

[62] Q. What happened at the conclusion of the conversation? I mean, did you leave? A. Yes, I left the office. I told him that—well, I would be back in the Radio Officers' Union office the following week.

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I says that I have some plans, I want to visit some friends over the week-end.

I got up to leave and he said, "Don't forget what I told you about the Bull Line. Just forget about any clearance for the Bull Line ships."

That is all he said at that point.

Q. This was on Saturday? A. Saturday.

Q. Did you come back to the union office? A. I come into the union office early Monday morning. It was about—between nine and ten o'clock. And I sat down in the outer

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office. There were possibly six or eight other members sitting around in the office and the office—

Q. Let's see. Mr. Howe sits in the inner office? A. His office is in the inner office.

Q. And his desk is in the inner office? A. Yes.

Q. And in the outer office people come and seek jobs; is that correct? A. Yes, it is really a meeting room but it is sort of a lounge.

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[63] Q. You were sitting there? A. I was sitting there. And the office—whole office was in charge of a Mr. Glynn.

Q. What is his job? A. There is one point I forgot to mention on the Saturday incident—I mean the previous Saturday. Can I—

Q. Yes, tell me what it is. A. It is the fact Mr.—in the process of Mr. Howe offering me a job with another company, he called Mr. Glynn in to the office and had Mr. Glynn act as a witness to him.

Q. A witness to what? A. To witness to him offering me the other job.

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Trial Examiner Scharnikow: Let's get the conversation.

Q. (By Mr. Geltman) Did he offer you a specific job? A. No, he did not offer a specific job.

Q. Just that he was offering you a job with somebody else? A. Some other company.

Q. Not Bull? A. That's right.

Q. You came in here on Monday and you say the office was in charge of Mr. Glenn on Monday? A. Yes.

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[64] Q. Tell me what happened that morning. A. Along

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about—oh, I would say ten o'clock—Mr. Glynn came out of the inner office and announced he had two jobs open.

One was for a tanker and the other one was for a Waterman Line ship, the SS Semmes.

Trial Examiner Scharnikow. Was that the Water Line.

The Witness: Waterman Line.

And he asked who wanted the job. Well, everybody in the outer office—that is, all the members—they all turned in their names, including myself.

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Trial Examiner Scharnikow: How many men were there sitting there?

The Witness: I cannot be certain, but I would say approximately six or eight.

Q. (By Mr. Geltman) Continue. A. And so it was—when—after all these men there turned in their names, Mr. Glynn went into the inner office and looked up to see who was on top of the rotation hiring list.

[65] So he came out and announced I was at the top, I was the top man on the rotation hiring list, and that I was to be given the job.

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So he then went back into the office. He asked me if I would take the job. I said I was not certain about it but I would go down and take a look at the ship. So I asked him then to write me out a clearance for it.

Q. Asked— A. I asked Mr. Glynn to write me out a clearance for it.

So Mr. Glynn went back into the inner office and in the meantime one of the other members that was in the group

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told me to be careful about taking the Semmes, that they had had a lot of labor trouble.

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[66] Q. Continue. A. So—

Q. Mr. Glynn is on the inside making out the clearance. A. Mr. Glynn came out into the outer—the lounge, the outer office, and handed me the clearance.

I told Mr. Glynn at that time, "I am not sure whether I am going to take the job or not."

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He said, "In either event, whether you do or don't, give me a ring back and let me know what you decide to do."

So at that point I left the union office and went down to the Waterman Line.

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[68] Q. (By Mr. Geltman) You took this and you say you went down to the Waterman Line? A. Yes. I went—left the union office and went to the Waterman Line Steamship office. And I met the lady in charge of the employment office—evidently she was the personnel manager at the Waterman Line Office and I showed her the assignment slip and told her that I was not sure whether I was going to take the ship—that I wanted to go out and look at it.

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[69] Q. Then what did you do? A. From that point I went to the ship, where it was berthed in Staten Island, and I went aboard the ship.

And there was nobody on the ship except a relief mate.

And I asked him if I could see the radio quarters. I said I was assigned to the ship and that I wanted to check over the equipment.

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Well, he said, "I cannot let you in the radio room without authorization from the company."

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[70] Q. (By Mr. Geltman) So you had a conversation with this man, [71] and then what did you do?

You left the ship? A. I left the ship and on the way back from this ship, I decided to stop off at the Bull Line Company office to see—

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Q. Continue. A. I decided to go by the Bull Line to collect some back pay. It was either back pay or back overtime I had coming from the previous ship.

And I went to the company offices and I met—I asked—I met Mr. Frey and I asked him about this back pay. And I cannot remember whether he made out a voucher; and I cannot remember whether I received the pay at that point. But during the course of the conversation with Mr. Frey, he said he had a job on the Evelyn, if I could get clearance from the union.

And I said, "Well, you know how the situation is." I says, "I don't know whether Mr. Howe will give me a clearance." I said, "Anyway, I will call him."

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[72] I just told him I came back from the Waterman Line ship and it was all fouled up and I decided not to take it.

He said, "If you can get the clearance, I will give you the job." He says, "If you can get the clearance, I will give you the job," he says, "and get in touch with the union about it."

So, at that point I walked out of the company office and I walked down with him about a half a block from the office and called—went into a pay phone booth and I called Mr. Howe.

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Q. You called the union. Go ahead. A. I called Mr. Howe. And I dialed the number, and Mr. Howe answered it, and I made a mistake at that point.

I said, "Mr. Frey!" And Mr. Howe, said, "Fowler, you are getting your wires crossed, aren't you?"

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Trial Examiner Scharnikow: Who said, "You are getting your wires crossed?"

The Witness: Mr. Howe said that.

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Q. (By Mr. Geltman) Did you know his voice over the telephone? [73] A. Yes, I knew his voice but my mind was in a state of confusion then which was the reason for me making that mistake.

And so he said, "Fowler, what are you doing down at the God damn Bull Line?"

I said I was down there to—I said, "I just come from there to collect some back pay that I had coming."

He said, "You are a God damn liar; you were there to steal some more jobs from the other members."

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I said, "No, I was not." I said, "I just went by there to collect some back pay; and if I want to go up there," I said, "it is still a free country, I should be allowed to go up to the office whenever I want to."

He said, "I told you to stay away from the Bull Line, if you had any business down there for you to come to us and we would have taken care of it for you."

At that point he says, "You were given a job on a Waterman Line ship; why didn't you take it?"

I said the reason was that the ship was all fouled up and I decided not to take it.

I said, "What are you trying to do? Railroad me out of the union?"

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Mr. Howe said, "Why don't you—" he says, "As far as I am concerned, you are through. Why don't you go over and join the AGA?"

Q. What is the AGA? [74] A. It is another radio officers' union that is affiliated with the CIO.

Q. And the Radio Officers' Union is affiliated with the AF of L; is that right? A. The Radio Officers' Union is affiliated with the AF of L.

Q. Continue. A. And he says—when I asked him, I said, "Are you trying to railroad me out of the union?"

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He said, "Why don't you go over and join the ACA? Maybe they will give you a job."

[75] I said, "No, I am not. I just decided not to take the Semmes."

He said, "Well, I cannot waste all day talking to you." Then he hung up the receiver.

Q. Had you finished the conversation when he hung up? A. Well, he cut the conversation short right at that point. And I immediately called him back and I says, "Is it your final decision in the whole matter?"

He said, "That is it," he says.

I said, "Is this your final decision?"

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He said, "Yes."

I said, "Well, in that case I will turn the whole matter over to the National Labor Relations Board and let them decide what to do about it."

And I hung up. I mean the conversation was terminated at that point again.

Q. After you spoke to Mr. Howe, were you in touch with the A. H. Bull Steamship Company? A. Well, at that point, which was approximately—maybe 11 or 12 o'clock, after the conversation was—phone conversation was

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finished, I walked around in that section down there for about an hour, hour and a half because my mind was in a state of confusion then. I didn't know what to do.

So I walked around and along about 1:30 or two o'clock I called Mr. Frey on the phone and I told him the conversation [76] with Mr. Howe and that I would not be given any more clearances for any more Bull Line ships.

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The Witness: So I called Mr. Frey and I told him the conversation I had with Mr. Howe and that Mr. Howe would not give me a clearance for any more Bull Line ships and the best thing for me to do is forget about the whole matter because—I mean he also stated that—it was such a point I would not be given any clearances at all.

So Mr. Frey then stated that he had a job for me and that he would give me a clearance if—he says he would give me a job if I could obtain a clearance from the union. [77] But, he said, "In that case I am just sorry, but there is nothing I can do about it."

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So I asked if he knew any other place I could get a job. And he said you might try United Fruit, which is not affiliated with the Radio Officers' Union.

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[78] Q. (By Mr. Geltman) Did you have any subsequent conversation with either the Bull Steamship Company or Mr. Howe? A. Not after Monday.

Tuesday—no, I will take it back.

Trial Examiner Scharnikow: You have answered the question. However, are you changing it now?

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Did you have a conversation after Monday with either Mr. Howe or Mr. Frey?

The Witness: No. With Mr. Frey on late Tuesday.

Q. (By Mr. Geltman) Tell me what it was. A. I told him that I went to United Fruit Company and applied; and then I went to Socony Vacuum and they took my name, but they had nothing—no opening for me; and I also told him I had finally decided to go back to Miami under the circumstances.

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Q. Did you go? A. I left on the 28th. That was Wednesday.

Q. Did you stay in Miami? A. Yes. I stayed up until I come up here.

Q. You stayed there for over a year? A. Yes:

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[79] Cross Examination:

Q. (By Mr. Silverman) Mr. Fowler, when did you first join [80] the Radio Officers' Union? A. Approximately June or July of 1942.

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[84] Q. (By Mr. Silverman) I would like to direct your attention Mr. Fowler, to this April situation first.

Do I understand correctly that on the morning of April 26th you appeared at the office of the union and waited in the outer office along with several other members of the union?

Was that the date? A. Was that Monday?

Q. Yes, I am informed that was a Monday morning. A. Monday morning about nine—about 9 a.m.

Q. And the purpose of your coming to the union office

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on that date was to go to work; is that right, Mr. Fowler?

A. When I walked in the union office, I did not exactly have that in mind. But not until the job came up—the job of the [85] Semmes came up.

Q. Were you seated in the outer office along with six or eight additional members of the union on that morning?

A. Yes.

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Q. Then there came a time, I believe you testified, between nine and ten that morning when Mr. Glynn came to the outer office and announced that there were two requests for radio officers, one being from a tanker and one from the SS Semmes; is that right? A. That is correct.

Q. This tanker you referred to, was that a ship of the Bull Line or was it some other company? A. No. It was a ship of another company.

Q. Another company. So that the only job openings that were announced that morning were job openings of two lines, neither of which was the Bull Line; is that correct? A. That is correct.

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Q. Then I believe you testified that when those jobs had been announced the men in the office with you who were members of the union handed in their names or turned in their names, is that correct? A. That is correct.

Q. And you did the same, did you? A. Yes.

Q. You turned in your name? [86] A. Yes, I did.

Q. What was the purpose of your turning in your name at that time? A. To bid on the job opening.

Q. I believe you testified after you, along with the other men, had bid on those job openings, Mr. Glynn, after consulting the records, returned to the outer office and announced that you were the top man entitled to the job and could therefore have it; is that right? A. That is correct.

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Q. And he thereupon made out this clearance slip, which has been marked General Counsel's Exhibit No. 8, and you signed it; is that correct? A. That is correct.

Q. Did you understand when you were signing this acceptance of this assignment you were indicating a willingness to work aboard this ship of the Waterman Steamship Company? A. I took it with a willingness to work for—on the Waterman Line ship, but I did not have—I could have rejected taking the ship if I found out it was not satisfactory.

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[91] Q. Did you ever go back to the office of the union after the morning of April 26, 1948? A. Back to the office—

Q. Yes. [92] A. (Continuing) —of the union after the morning, after I received the clearance from the Semmes?

Q. That's right. A. No.

Q. You knew that any openings for jobs that might come into the union office were announced at the office of the union from time to time as they were received, did you not? A. That was right.

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Q. On this morning of April 26, 1948, did you hear any announcement of any opening aboard a Bull Line ship? A. Previous to that, or right at that point?

Q. Right at that point first, did you hear anything during the morning you were there? A. I knew there was going to be an opening coming up on the—

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[93] Q. (By Mr. Silverman) When you said a moment ago you knew that there was going to be an opening, was that on the basis of something you had learned at the

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union or something you had learned from some outside source? A. An opening on the Bull Line or—

Q. On the Bull Line, yes. A. That was something from an outside source.

Q. As far as you know, did the union have any knowledge whatsoever of any opening aboard a Bull Line ship?

A. As far as I know, no.

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Q. You knew, did you not, Mr. Fowler, that any man in the union hall, union office, had a right to bid on any job announced at the union office, did you not? A. Yes.

Q. You also knew that when such bidding took place, the member of the union who was longest out of work or who had top position on the rotary hiring list would be afforded first preference for any job opening that might be announced; isn't that so? A. Not particularly, because I had been employed by the company through the union on another basis, not on a rotation hiring basis.

Trial Examiner Scharnikow: When you say "by the company," [94] what company do you mean?

The Witness: By the Bull Steamship Company.

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Q. (By Mr. Silverman) You knew, for example, on this morning of April 26, 1948, the reason you were given first preference to this assignment aboard the Raphael Semmes of the Waterman Steamship Line was the fact you were the man with the top position on the list; isn't that so? A. That is correct.

Q. And that is why you had the privilege of taking that job ahead of any of these other six or eight men who were in the union office at the time; isn't that so? A. That is so.

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[95] Q. (By Mr. Silverman) When these two job openings were announced on April 26, 1948, there was nothing to compel you to bid on those openings, was there? A. Yes, there were.

Q. Do you refer to an alleged conversation with Mr. Howe in giving that answer? A. Yes.

Q. What are you referring to? Or are you referring to the [96] general system? A. No, I am referring to the previous conversations with Mr. Howe.

Q. Divorce your mind from that for a moment, if you can, and I ask you whether normally if these two job openings had been announced, whether you were not free to pass up those openings and wait for another opening that might be more to your liking? A. Well, I would have been free to under normal circumstances, yes.

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Q. Now, if you passed up those openings, the next job opening that might be announced would be one as to which you would again have top priority; isn't that so? A. That is so, yes.

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[97] Q. (By Mr. Silverman) You went to the Waterman ship and looked it over; is that right? A. I went to the Waterman ship, that's right.

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Q. And on the way back from Staten Island you stopped at the Bull Line office, is that right? A. That is correct.

Q. And you had a conversation there with Mr. Frey, is that correct? A. That is correct.

Q. And after you had had your conversation with Mr. Frey, you left the Bull Line office and you went to a phone booth, is that right? [98] A. That's right.

Q. And from that phone booth you called Mr. Howe? A. That is correct.

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Q. And in the course of that conversation with Mr. Howe did you tell him that you had decided not to take the job aboard the Waterman Line ship? A. Yes, that is correct.

Q. Did you during the course of that conversation testify Mr. Howe asked you to come up to the union office?

A. Mr. Howe did not ask me to come up to the union office.

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Q. Did he say anything to you about the fact if there were any back pay due you from the Bull Line, "come to us and we will take care of you"? A. He says, "You could have." He did not say come to the office. He said, "If you would have told us previously, we would have taken care of it."

Q. What date was this? A. That was Monday morning.

Q. This is still April 26th, is that right? A. That Monday morning. I am going by days of the week, not dates.

Q. Did you have any knowledge about an opening aboard a Bull Line ship at that particular time? A. Yes, I did.

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Q. Do you know whether the union had any knowledge of an [99] opening aboard a Bull Line ship at that time? A. No.

Q. Did you ask Mr. Howe for a clearance for any particular Bull Line ship on April 26th, during the course of this telephone conversation? A. No, I did not have a chance.

Q. Did you ever speak with Mr. Howe again after that conversation, after he had hung up and you called him back? Or was that your last conversation with him? A. After the telephone conversation terminated, that was my last conversation with him.

Q. Do you recall Mr. Howe saying anything during the course of that conversation to the effect that they

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had no Bull Line opening at that time? A. I have no recollection of that, no.

Q. Don't you recall his saying to you that "We have no opening for a Bull Line ship at this time"? A. That statement was not made during the conversation.

* * * * *

[104] Q. I believe you testified you had been to the union office on the Saturday preceding April 26th, which would have been April 24th, is that right? A. Either Friday or Saturday. I cannot recall the exact date. I mean I cannot recall the exact day of the week. It was either Friday or Saturday.

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Q. You picked up your mail on that occasion, didn't you? A. That's right.

Q. Did you sit down in the union office, wait for a job? A. No.

Q. Did you ever talk with Mr. Glynn on that day?

* * * * *

[105] The Witness: I had a conversation when I went in telling Mr. Howe that I came back on the basis of his letter, Mr. Glynn was in the office at that time, and during the conversation with Mr. Howe, Mr. Howe called Mr. Glynn to act as a witness to some statements he had made to me.

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Q. (By Mr. Silverman) What did you mean when you said to Mr. Howe you had come back on the basis of his letter of March 25th? A. I meant that I was in good standing with the union. That means I was eligible to take jobs that came up in the union, regardless—I didn't mention what particular job, but—

Q. And what did Mr. Howe say to you on that occasion?

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A. That is on Friday or Saturday, I mean, when I was in the office?

Q. Yes. A. He said we had plenty of jobs, that the union had plenty of jobs available, but also added for me not to expect any clearance for a Bull Line ship.

Q. Did he say anything to you about refraining from [106] soliciting the Bull Line office directly for jobs? A. No. No. He made no—

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Q. What did you say to him when he said not to expect a clearance for any Bull Line ship? A. Well, I said, "As long as I was in good standing with the union, I had not violated any rules or regulations, that I should be allowed to choose the ship and company of my liking.

Q. Is that where the conversation ended on that day? A. Well, I told him I would be back, that I did not come in right at that point for a job, that I would be back early the following week. And when I left he said, "Just don't forget what I told you about a Bull Line ship."

That is the exact words he used.

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Q. So that if I understand the picture correctly, on this Saturday, which was April 24th, or Friday, which would have been April 23rd, you had asserted your right to take any job you liked, including a Bull Line ship, and it is your testimony that Mr. Howe had told you he would decline to give you a clearance aboard a Bull Line ship; is that the sum and substance of that conversation? A. Yes, I would say it was.

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[109] Q. I believe you testified that on Tuesday, which would be April 27th, you went to the United Fruit Lines and to Socony Vacuum, is that right? A. On Tuesday, that is correct.

Q. At that time you knew, did you not, you were still top man on the list at the union office, is that right?

Did you know that? A. Theoretically, yes, but in practically, no, on account of the telephone conversation I had had with Mr. Howe the previous day.

Q. Did Mr. Howe say anything to you in words or substance to the effect you could not get a job? A. That is correct, he did.

Q. He did? A. He did not say the exact words. He said, "as far as I am concerned," he says, "you are through. The best thing for you to do is go back to Miami or go over and try to join the ACA."

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[113] Q. (By Mr. Silverman) On the Friday or Saturday before April 26th, you had, in the course of a discussion or argument with Mr. Howe, taken the position you were entitled to an assignment to a Bull Line ship or any other ship; isn't that so? A. That is correct.

Q. And when you came to the office of the union on Monday, presumably you could have waited until an assignment from a Bull Line ship was announced in the hall, an assignment which you had been led to expect would be forthcoming, isn't that so? [114] A. If I would have followed the regular procedure, yes; but due to the pressure that was put on me, why I figured it was better to take that ship if it were satisfactory—the Semmes—at that point, I figured it was better for me to take that ship.

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Q. What pressure was applied to you between this conversation of April 23rd or 24th, the Friday or Saturday prior to the 26th, and the morning of the 26th? A. It was the conversation that I had with Mr. Howe telling

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me that I would not be given a clearance for a Bull Line ship, and the fact that in the February incident that I was told that if I had attempted or if I would attempt to take a Bull Line ship that I would be sorry for it.

* * * * *

[116] Q. Now I want to refer for a few minutes to this February incident.

341

When you came aboard the ship for the first time in February, 1948, had you up to that point contacted the union in any way? A. The only contact I had was walking into the union office and getting my mail.

Q. You had no conversation with anyone in the union office? A. No, not—

Q. You did not let anyone in the union office know directly or indirectly you were planning to go aboard a ship of the Bull Line? A. No. Prior to my first contact with the ship.

Q. And you went aboard the Frances and found a radio officer aboard, is that correct? A. That is correct. On my first contact.

342

Q. This radio officer—do you know his name? [117] A. I don't recall right offhand.

Q. Would the name Kozel refresh your mind on that? A. Yes, that is the name.

Q. When you went to the union office on February 26, did you go there solely for the purpose of getting your mail?

Mr. Geltman: That is a Thursday.

The Witness: That is right.

* * * * *

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Q. Only for the purpose of getting your mail? A. And I had intended to talk to Mr. Howe when I went there, but he was busy at the time and I did not—I had no [118] conversation with him.

* * * * *

Q. When you got aboard the Frances, did Mr. Kozel indicate [119] to you that he was planning to remain aboard the ship, is that so? A. He did not say he was planning to remain aboard the ship. He says he was going to remain if he could.

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Q. If he could. As a matter of fact, he asked you what the union had to say about you coming aboard while he is still aboard, isn't that so? A. That's right.

Q. So you got the very clear impression from him, didn't you, that he preferred to remain aboard that ship? A. Well, I told him that we would let the union straighten it out.

* * * * *

[127] Mr. Silverman: In view of the entire situation, I am wondering whether it would be more practical to adjourn for a reasonable length of time to enable us to possibly conclude this hearing at that time.

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Trial Examiner Scharnikow: I am still of the opinion an adjournment until next Monday at ten o'clock in the morning for the purpose of your preparation is the proper term of the recess. So I am going to adjourn the hearing until ten o'clock next Monday in the same hearing room.

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Willard C. Fowler, for Board, Cross

[133] WILLARD CHRISTIAN FOWLER resumed the stand and was examined and testified further as follows:

Cross Examination (Continued):

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[141] Q. (By Mr. Silverman) I show you General Counsel's Exhibit 8 and direct your attention to the language on the clearance which states:

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"I hereby agree to notify the Radio Officers Union by telephone or telegram before quitting my ship in any United States port."

You were familiar with that language in the clearance that was issued to all members, were you not, Mr. Fowler?
A. Yes. I was familiar with it.

• • • • •

[147] Q. Let me ask you this, Mr. Fowler: On the occasion of your visits to the office of the union, have you observed a large sign in the union office reading in words or in substance: "Notify the union before you leave your ship"? A. Notify your union before you leave your ship?

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Q. That is the substance of it. A. Yes.

Q. The sense of it? A. Yes.

Q. You have seen that? A. Yes.

Q. You had seen that before February, 1948, hadn't you? A. Before February, 1948, yes.

Q. Now I ask you whether you know as a fact that one of the major purposes of that rule is to assure the fact that no clearance is issued for a ship before notification has been received by the union that the operator aboard that ship has quit or is quitting the ship?

• • • • •

Colloquy

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[148] The Witness: The answer is yes.

* * * * *

[153] Mr. Silverman: May I at this time offer in evidence—

Trial Examiner Scharnikow: Will you have them marked first, please, as Respondent's Exhibit 2 and 3?

Mr. Silverman: This is a "standard dry cargo and passenger ship agreement of 1947."

Trial Examiner Scharnikow: Between—

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Mr. Silverman: Between the Radio Officers' Union and various lines, including the A. H. Bull Steamship Company as well as the Waterman Steamship Corporation.

Mr. Geltman: And the A. H. Bull Steamship Company.

[154] Mr. Silverman: I mentioned that, yes.

(Thereupon, the document above referred to was marked Respondent's Exhibit No. 2 for identification.)

Mr. Silverman: And may I also have marked this memorandum of agreement bearing date the 16th day of August, 1947 between the Radio Officers' Union and the A. H. Bull Steamship Company?

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(Thereupon, the document above referred to was marked Respondent's Exhibit No. 3 for identification.)

Mr. Geltman: No objection.

Mr. Silverman: I now offer in evidence Respondent's Exhibit No. 2 for identification.

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Colloquy

Trial Examiner Scharnikow: Do you wish to offer both Exhibit No. 2 and Exhibit No. 3?

Mr. Silverman: And the Respondent's Exhibit 3.

Trial Examiner Scharnikow: Any objection?

Mr. Geltman: No objection.

Trial Examiner Scharnikow: Respondent's Exhibit 2 and Exhibit 3 are admitted in evidence.

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(Thereupon, the documents previously marked Respondent's Exhibits Nos. 2 and 3 for identification were received in evidence.)

Trial Examiner Scharnikow: May I ask can you stipulate as to whether or not Respondent's Exhibit 2 and Exhibit 3 are the only agreements in effect between the respondent union and the Bull Steamship Company as of February 27 and also—

[155] Mr. Geltman: As of the time of both these incidents.

Trial Examiner Scharnikow: (Continuing) —and also April 26.

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Mr. Silverman: Yes, we so stipulate.

Trial Examiner Scharnikow: Is that agreeable, Mr. Geltman?

Mr. Geltman: Yes. We so stipulate.

Trial Examiner Scharnikow: The stipulation is accepted.

Mr. Silverman: May we also have a stipulation to the effect that a like statement is likewise true of the Waterman Steamship Corporation?

Mr. Geltman: I have no knowledge. If you say so, Mr. Silverman, I will take your word, if you so assert.

Colloquy

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Mr. Silverman: I do so assert.

Trial Examiner Scharnikow: Do you accept the statement?

Mr. Geltman: Yes, I accept the statement.

Trial Examiner Scharnikow: I take it is stipulated, unless you offer proof to the contrary before the close of the hearing.

Mr. Geltman: Yes.

Trial Examiner Scharnikow: Very well. May I ask in connection with that, was that last stipulation intended to include Respondent's Exhibit No. 3: That Respondent's Exhibit No. 3 was also an effective memorandum between the Respondent Union and Waterman?

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[156] Mr. Silverman: Yes, that is right, and in the identical form.

Mr. Geltman: As to that, Respondent's Exhibit 3 is simply with a single concern. That is to say, it is the respondent on the one hand and the A. H. Bull Steamship Company on the other. There are not in evidence any similar agreements with respect to the Waterman line.

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If Mr. Silverman will make the same assertion with respect to the existence of such an agreement, I will accept it.

Mr. Silverman: Yes. I am prepared to make the statement that memorandum of agreement in identical form to Respondent's Exhibit 3 was likewise in existence with respect to Waterman Steamship Corporation.

Mr. Geltman: Made when?

Mr. Silverman: The same date: August 16, 1947.

Trial Examiner Scharnikow: Shall I accept that

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statement subject to the possibility of further proof to the contrary?

Mr. Geltman: Yes, sir.

Trial Examiner Scharnikow: Very well.

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[160] Q. Mr. Fowler, when you came to the office of the union after the receipt of the telegram which has been marked General Counsel's Exhibit 4, is it not a fact you stated to Mr. Howe that Mr. Kozel was remaining aboard the vessel and that had you known that he was aboard you would not have come up to New York in response to the telegram you had received from Mr. Frey? A. You put two questions there together.

Q. Suppose you answer them separately, then. A. The first one: I did not tell Mr. Howe that Kozel was staying aboard. I did not say that.

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And the second part of your question was if I had known [161] Mr. Kozel was on board the ship, I would not have come up from New York—I mean I would not have come up from Miami: yes, I may have—I may—I mean as near as I can recollect I made some statements similar to that. I would not say in the exact words.

Trial Examiner Scharnikow: Some statement similar to what?

The Witness: Similar to that, I would not have come up if I had known that Kozel—I mean that there was a man on the ship.

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[162] Q. Did you see Mr. Frey at or between February 26 and the time you saw Mr. Howe at the union office? A. Yes, I saw him once.

Q. What day was that? A. That was on a Saturday: Saturday morning.

Q. And I believe you testified that at that time Mr. Frey told you that Mr. Kozel was only on a temporary clearance; is that correct? A. That I testified that Kozel—that Mr. Frey told me Kozel was on a temporary clearance: Yes.

Q. Did he tell you that? A. Yes, he did. He stated that the man, the former—the regular operator was, as soon as he was ready to go aboard the ship, was to take the job as soon as he got well. That was the former operator that got hurt in New Orleans.

Q. This was February 28 on a Saturday, is that right? [163] A. That's right.

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Trial Examiner Scharnikow: Still talking about your conversation with Mr. Frey on Saturday morning—

The Witness: Yes.

▲ Trial Examiner Scharnikow: (Continuing)—when Mr. Frey told you that Kozel was on the ship only on a temporary clearance.

The Witness: That is correct.

Trial Examiner Scharnikow: Did Mr. Frey tell you how long you were expected to work on the ship, the Frances?

The Witness: Yes. I had the understanding—

Trial Examiner Scharnikow: Wait a minute. I asked you did you have any discussion with Mr. Frey that morning as to how long he wanted you stay on this ship, the Frances?

The Witness: Yes.

Trial Examiner Scharnikow: You had such a discussion?

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The Witness: Yes. I mean it was not a discussion. There was—

Trial Examiner Scharnikow: Did he tell you how long?

The Witness: Yes, he did.

Trial Examiner Scharnikow: You could expect to stay [164] on the Frances?

The Witness: Yes, he did.

Trial Examiner Scharnikow: What did he say?

The Witness: He said I would stay on on a temporary clearance—I mean temporary basis—until the former operator was well enough to come back.

Mr. Geltman: Are you referring to Kozel? May we clear that up?

The Witness: No. I am referring to the former operator, the regular operator of the ship.

Trial Examiner Scharnikow: Did he mention his name?

The Witness: Yes.

Trial Examiner Scharnikow: Do you remember the name?

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The Witness: Yes. The name was Lopez.

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[165] Q. Now, after the receipt of this telegram which was General Counsel's Exhibit 4, did anybody from the union appear at the ship?

[166] Trial Examiner Scharnikow: Other than Miller?

Q. (By Mr. Silverman) Other than Miller? A. No.

Q. Was there any picket line thrown around the ship? A. No.

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Q. (By Mr. Silverman) Did anybody personally come down and threaten you in any way? A. Not at the ship, no.

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[174] Q. And then on Saturday morning, April 24, you went to the union; is that right? A. Well, I testified that I went either—I was not sure whether it was Friday or Saturday.

Q. Yes. What is your best recollection now? A. It was still either Friday or Saturday.

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[176] Q. (By Mr. Silverman) Whether it was Friday or Saturday, you testified you came to the union office; is that right? A. That is correct.

Q. Who was there at the time? A. Mr. Howe and Mr. Glynn.

Q. Were any other members of the union present? A. I do not recall that.

Q. Do you recall whether you had to wait before you saw Mr. Howe or Mr. Glynn? A. I recall upon walking in I walked to the mail box, that is the mail section to see if I had any mail.

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Q. Yes. And then what did you do? A. Then I started the conversation with Mr. Howe.

Q. Where? A. He was seated at his desk in the inner office.

Q. And was Mr. Glynn in that office at that time? A. No. He was doing some work in a print room that was adjacent to the office.

Q. What did you say and what was the conversation on that date? A. Well, I walked in and I told Mr. Howe that I had received his letter of March the 25th and I came back to town.

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And I says, "According to your letter I evidently am in [177] good standing." I says, "I received also the receipt for the dues."

He says, "Yes," he says, "are you ready to ship out?" or words to that effect.

I said, "Yes."

No. I says, "How about shipping out?"

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He says, "Yes, we have plenty"—well, he says, "We have plenty of jobs but do not expect any clearance for a Bull line ship." He says, "Don't expect any clearance for a Bull line ship because you won't get any. The situation still stands," as in relation to the February incident.

Then I told him, I says, "As long as I am in good standing, I haven't violated any rules and regulations of the union, I do not see why I should not be allowed to select or choose the company and the ship I want to work for."

He says, "That is all very well," he says, "only as far as other companies are concerned; but it does not include the Bull line."

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Q. Did anything else take place during the course of the conversation? A. Yes. After that I says, "Well, I will be back the first—" I says, "I am not going to do anything for the next couple of days," I says, "I will be back the first part of the week."

And Mr. Howe then said, "If you do, don't forget what I told you about the Bull line."

[193] Redirect Examination:

Q. (By Mr. Geltman) Mr. Fowler, when you came down—referring now to the February incident—you reported to the ship you said on Thursday night. That is February 26. And you came down again the following day; there

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was a conversation with Kozel on Thursday night; and you showed up on Friday.

You went to the radio room at that time, didn't you?
A. On Friday?

Q. On Friday. [194] A. Yes, that's right, on Friday.

Q. About what time of day was it? A. It was approximately 11:30, approximately 11:30.

Q. I do not ask you to be absolutely precise, this being two years ago. Give me the best of your recollection.

When you got into the radio room, was there anything belonging to Kozel there? A. No, there was nothing.

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Q. Was his license on the wall? A. His license was down. I mean it was taken off of the bulkhead. That is the first I knew he had actually left, when I examined the license holder on the radio room bulkhead.

Q. How long have you been a radio operator, Mr. Fowler? A. A commercial—do you mean—

Q. On board ship. A. On board ship from approximately June or July of 1942 up to January the 2nd, 1948.

Q. Is it customary while you are attached to a ship to keep your license in view? A. That is an FCC—I mean by FCC, that is a Federal Communications Commission requirement that your license be posted on the bulkhead when you are assigned to that ship.

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Trial Examiner Scharnikow: Is there any dispute as to that? I will take that as the fact.

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[195] Q. (By Mr. Geltman) You stayed aboard the ship that night? A. What night was that?

Q. That night you reported and found Kozel had left.
A. That is Friday?

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Q. Yes. A. Friday night I stayed aboard the ship, that is right.

Q. There was no sign of Kozel? A. There was no sign of Kozel, otherwise I would not have stayed on the ship, because my primary reason for coming down to the ship on Friday noon, approximately noon, was to determine whether Kozel was going to stay, to continue on in the employ of the ship or not.

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Q. It is. Friday that you got the telegram from the union, isn't it? A. Late Friday afternoon. That is the 27th. February 27, 1948.

[196] Q. And after you got that telegram, you telephoned Mr. Howe at the union, didn't you? A. I telephoned Mr. Howe. When I received the telegram, I telephoned Mr. Frey and—

Q. I am sorry.

And you telephoned Mr. Howe on the following day, on Saturday. A. On Saturday, that is correct.

Q. On Saturday night you stayed on the ship? A. Yes, I did.

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Q. And on Sunday you stayed on? A. Yes. I stayed on Sunday.

Q. You stayed in the radio quarters all the time? A. Yes, I stayed in the radio quarters all the time.

Q. Was there any sign of Kozel? A. No, there was no sign of Kozel after I came aboard Thursday, approximately noon.

Q. You mean Friday. A. I mean—I am sorry. Friday, approximately noon. That is after I had the conversation with him Thursday night.

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[197] Q. You got the telegram on Friday; you called Mr. Howe on Saturday. A. Saturday.

Q. And you came down there to see him. A. I made the appointment to come up Monday morning and see him.

Q. Now you have come up to see him. A. I walked in and Mr. Howe was seated at his desk in the union office at 1440 Broadway; and I walked in and I says, "Mr. Howe, there seems to be quite a mixup over this Frances." I says, "I received your telegram. Am I suspended?"

Mr. Howe immediately says, "Fowler, if those men in the outer office knew what you did, they would tear you to pieces."

I says, "What have I done?" I says, "I have not signed on any ship." I says, "I am not a crew member of the S. S. Frances." I says, "I haven't done anything."

He says, "Fowler, as far as you are concerned, you are through with the Bull Line." He says, "Don't ever expect to get another clearance issued to you from the Bull Line again." He says, "You and a few more of those good company men down there are kind of running things to suit themselves and I am going to break it up."

"Well," I says, "Mr. Howe, I have never done anything against the union to cause all this confusion." I says, "I have never signed on a ship before without first obtaining a [198] clearance."

He says, "That makes no difference at all." He says, "As far as the Bull Line is concerned, you are through."

And then Mr. Howe, after an interval there of, I would say—during the course of the conversation—he says, "Now, if you want to straighten yourself out," he says, "We have plenty of jobs available if you want to take a ship—a job with another company or another ship—a ship of another company, why, you can; how about it?"

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I says, "Well, this whole business has me all confused," I says, "I cannot have a clearance for the Frances?"

He says, "Absolutely not." He says, "You are through as far as the Bull Line is concerned."

Well, I says, "This thing has me kind of confused." I says, "I think the best thing for me to do is go back to Miami. I came up here with the understanding there was a job open but I did not know it had anything to do with displacing another man."

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And then Mr. Howe insisted that I take a job with another company.

He says, "There is no sense you coming up all the way making the trip up," he says, "if you want to take a job with another company, why, you can. How about it?"

I says, "No. Just leave it go at that," I says, "I am going back to Miami."

[199] So the conversation turned to a little friendlier vein after I found out I was not going to get myself torn to pieces by staying there, and I asked Mr. Howe if I could stay aboard the Frances that night, which was Monday night, and Mr. Howe consented to this.

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Q. And you did stay aboard? A. I stayed aboard Monday night.

Q. In the radio officer's quarters? A. In the radio officer's quarters.

Q. And no Kozel? A. No. Kozel was not—the first and the only time I have [200] ever seen Kozel was Thursday night when I had spoken to him when I had come aboard the Frances on Thursday night.

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Q. (By Mr. Geltman) Let's refer to the April incident. Now come to the day, April 26, when you went down to

look at the Semmes; you came back, stopped off at the Bull Line, subsequently telephoned Mr. Howe.

In that conversation did Mr. Howe make any reference to the job you had been offered on the Waterman Line ship, the Semmes? A. Yes. In the course of the conversation he says, "You were given a job on a Waterman Line ship. Why didn't you take [201] that job?"

And then I answered that the ship had been—the ship was all fouled up, had been having trouble on it, and I decided not to take it.

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Q. (By Mr. Geltman) That was the occasion he hung up and you called him back; is that right? A. That's right.

Q. He hung up in the middle of the conversation. A. In the middle of the conversation.

Q. And after he hung up and you called him back, did you speak very long? A. No, not very long.

Q. How long? What happened after you called him back? A. Well, I called him back and I says, first I asked him, "Why are you trying to railroad me out of the union?"

And he says, "Fowler, why don't you go over and join the ACA? Maybe they will give you a job."

I said then, "Mr. Howe, is that your final decision on the whole matter?" I says, "Is this your final answer?"

He says, "Yes, and furthermore I haven't got all day to waste; I haven't got all day to waste time talking to you." [202] Well, I says in that case the only thing I can do is to turn the whole matter over to the National Labor Relations Board and see what they have to say about it.

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(Examination)

Q. (By Trial Examiner Scharnikow) Let's see if I am correct on some points in your testimony, Mr. Fowler.

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When you came back in April, you called Mr. Frey, is that correct? That was the first thing you did? A. Yes. That is correct.

Q. And Mr. Frey told you that you should keep in touch with him, that something might turn up in the near future, in the next few days. A. No. He said to keep in touch with him, he says something will probably turn up in a few days.

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Q. Then on Friday or Saturday you had this conversation with Mr. Howe at the union office? A. That's right.

Q. Did you tell Mr. Howe anything about what Mr. Frey had told you? [203] A. No, I did not. I did not mention it.

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Q. Did you refer to the possibility—you, yourself, raise the possibility of your going to work for the Bull Line? A. Well, when I walked into—on that Friday or Saturday—I told Mr. Howe that I had come back and I was looking for a job. And Mr. Howe did not give me a chance to raise the possibility of working for the Bull Line because he had said, "We have plenty of jobs available but don't expect any clearance for the Bull Line for a Bull Line ship."

Q. Then on Monday, after you had taken a look at the Semmes— A. Yes, sir.

Q. (Continuing) —you went to the Bull Line office? A. That's right.

Q. And spoke to Mr. Frey? A. Yes.

Q. What did Mr. Frey say? A. He said, "We will have to—". He says, "We have a job—" He says, "I have a job for you but first of all you will have to [204] get a clearance from the union for it."

And I says, "Well, Mr. Howe has already told me—" I told Mr. Frey Mr. Howe had already told me I would not be given a clearance for a Bull Line ship but however

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I would see what I could do; I would ask him again to see if it were possible he had changed his view or his viewpoint in any way about me working for the Bull Line.

Q. After this conversation you spoke with Mr. Howe on the telephone? A. Yes.

Q. During that telephone conversation did you tell Mr. Howe that you had spoken with Mr. Frey? A. No, I did not get a chance to.

Q. You did not say anything about the offer of the job? A. No. I did not get a chance to say anything about it, the way the conversation went, I had no chance to.

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Q. Did you speak with Frey after he told you he had a job on the Steamship Evelyn if you could get clearance and before you left for Miami?

* * * * *

The Witness: Yes, I did.

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[205] Q. When was it? A. That was later that afternoon after the telephone conversation with Mr. Howe.

Q. What was that conversation? A. Well, I told him that I had just been read the riot act as far as me working for the Bull Line was concerned. And I said I was sorry about the whole business but there is nothing I can do without a clearance.

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And he says, "Well, you might try United Fruit here."

So I says, "Well, I will go over and take a look at them." I mean, "I will go over and contact them." I also mentioned the fact I was going down to Socony Vacuum because that—they might have something because I knew they did not have the same contract with the union that the Bull Line had.

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Robert H. Frey, for Board, Direct

[209] ROBERT H. FREY (Board Witness)

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[210] Direct Examination:

Q. (By Mr. Geltman) * * *

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Q. Mr. Frey, you are employed by the A. H. Bull Steamship Company, are you not? A. Yes, sir.

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Q. How long have you been employed? A. Since January 1, 1930.

Q. What is your position? A. Radio supervisor.

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Q. What does your job generally entail, will you tell us, please? A. Well, supervision of all the radio stations in our mobile ship stations and hiring of personnel to operate these stations, maintenance and repair of radio equipment.

Q. You do that hiring of radio officers for the company, is that it? [211] A. Yes, sir.

Q. Have done so for many years? A. Yes, sir.

396

Q. Did you hire Fowler on the various ships for which he worked or on which he worked for the A. H. Bull Steamship Company? A. Yes, sir.

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Q. (By Mr. Geltman) As part of your job do you keep in touch with the radio officers' situation on the various ships of the company, as to whether vacancies are expected? A. Yes, sir.

Q. That has always been part of your job? A. That's right. Unless in my absence on vacation or something like that, a position comes up and then the port captain undoubtedly takes—usually takes over.

Robert H. Frey, for Board, Direct

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Q. But when you are around, it is your responsibility.

A. That's right, yes.

Q. I show you this telegram, General Counsel's Exhibit 3, and ask you whether you sent that telegram. A. May I refer to my copy?

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[212] Q. (By Mr. Geltman) The exhibit just referred to does not have your name? A. Yes, but I did send that telegram.

Q. You did send that telegram? A. Sure.

398

Q. The telegram says:

"Proceed New York as soon as possible for position SS Frances,"

and was directed to Willard Fowler. A. That's right.

Q. Did you receive any communication from Fowler after this wire was sent? A. When he arrived in New York?

[213] Q. No, no. I refer to after the wire was sent. A. Oh, well, he telephoned me long distance and stated he would be up in answer to this telegram which I had sent, that is right.

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Q. The position you were offered by that wire was that of radio officer on the Frances, wasn't it? A. That is correct.

Q. At the time you sent the wire, were you anticipating a vacancy in the position of radio officer on the Frances? A. Definitely.

Q. What, if anything, had happened to cause you to anticipate a vacancy in that position? A. Well, the operator that was on there previous to Mr. Kozel had been injured in New Orleans; and in talking to our agents in New Orleans it was requested Mr. Lopez be replaced by an operator.

400

Robert H. Frey, for Board, Direct

Q. Mr. Lopez is the one that was injured? A. Mr. Lopez is the one that was injured and the one that Mr. Kozel replaced and he was to go on board for that voyage only. That was to be the understanding.

Q. Who said that? A. I told the agents that was what they were to convey to [214] Lopez and to the union.

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401

Q. (By Mr. Geltman) The week you sent the wire to Mr. Fowler, this wire you have just looked at, did you see Mr. Fowler? A. I saw Fowler on the following Saturday, which I believe was the 28th of February, if I am not mistaken.

Q. That is right. The 28th.

Do you know Mr. Howe? A. Yes, sir.

Q. Who is Mr. Howe? A. Mr. Howe is secretary-treasurer of the Radio Officers' Union.

Q. You have had lots of meetings with Mr. Howe? A. Yes, over a good number of years.

Q. The week you saw Mr. Fowler on February 28, did you have any conversation or conversations with Mr. Howe? A. It was on the day before, that was Friday.

402

Q. That was the 27th? A. 27th. Mr. Howe called me and asked me what I was trying to do, was I trying to run my own union because he had heard undoubtedly Fowler had been aboard the Frances as a replacement.

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[215] Trial Examiner Scharnikow: Tell us what Howe said to you and what you said to Howe.

The Witness: Mr. Howe asked whether I was trying to run my own union, and I said no, I was not.

Q. (By Mr. Geltman) What did he then say? A. He said it looked that way, and he was not going to have any-

Robert H. Frey, for Board, Direct

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thing of the kind taking place, such as Fowler replacing Kozel.

Q. What did you then say? A. Well, that was about the extent of the conversation at that particular time. * * *

Q. I show you this telegram, General Counsel's Exhibit No. 4, and ask whether you ever saw it before. A. Yes, sir, I have.

Q. That is the telegram which says, "You are—" directed to Fowler, signed by Fred. M. Howe, general secretary-treasurer, Radio Officers' Union, saying: "You are—" 404

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Q. (By Mr. Geltman) When did you see that and where? A. On Saturday, the 28th of February on board the Frances at Pier 22, Brooklyn.

Q. Did you see Fowler at that time? [216] A. Yes. He was aboard the ship.

Q. How did you get to see this telegram? A. He showed it to me.

Q. Did you have a conversation with Fowler then at that time? A. Well, I could not understand the contents of the telegram exactly. And I asked Fowler whether he was in good standing with the union and requested him to show me his union card. And he had a union card showing his dues paid up. 405

Q. Did he show it to you? A. He showed it to me. His dues were paid up beyond the date of this particular telegram.

Q. While you were at the ship, did you look at the radio room? A. Yes, sir, I did.

Q. Did you find out whether or not Kozel was still there? A. Kozel was not there, neither was his baggage nor his license there. I found out from the officer of the ship he had left with his baggage.

406

Robert H. Frey, for Board, Direct

Mr. Geltman: In connection with the absence of the license, I wish to call attention particularly to Federal Communications Commission rule and regulation 8.63, Posting of Licenses.

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It reads as follows: "The original ship radio station license and the original license of each operator of the ship station while he is employed or designated as radio operator [217] on the vessel, shall be posted in a conspicuous place in the associated radio operating room on board the ship, except when any operator license has been submitted to the Commission in accordance with relevant provisions of Part 13."

And then it has a provision which is not here applicable.

I may state I have shown this to Mr. Silverman, and it is a matter that I call to the Examiner's judicial notice.

Q. (By Mr. Geltman) Now, before the Frances left New York, did you get a replacement radio operator? A. Yes, we did.

408

Q. How did you arrange for that? You arranged for it, didn't you? A. Yes. I called the union and requested a replacement.

Q. When was this? A. This was on the afternoon of Saturday, the 28th, sometime after—well, after noontime and after finding Mr. Kozel was not there, I requested the union to give Fowler a clearance.

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Trial Examiner Scharnikow: To whom did you speak?

The Witness: I spoke to Mr. Howe, and I requested Mr. Fowler be given a clearance for the Frances

Robert H. Frey, for Board, Direct

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since Mr. Kozel had left or that Mr. Kozel be returned to the ship since Mr. Howe did not—was objecting to Mr. Fowler showing up [218] previously for the job.

And Mr. Howe said he would not give Mr. Fowler clearance for the ship.

And I said, "Very well. Send me another man."

Q. Did you know where Fowler was at that time, assuming the union had said, "Yes, you can have Fowler," did you know where to reach him? A. He was staying aboard the ship.

410

Q. How did you know that? A. Because I saw him and he mentioned he was sleeping aboard the ship.

Q. So the union sent you another man? A. Yes.

Q. When the new man reported, did he present a clearance slip from the union? A. Yes, he did.

* * * * *

[219] Q. (By Mr. Geltman) * * *

Will you tell me when the man was assigned by the company to that ship? A. The assignment letter is dated March 2, 1948.

411

Q. That means he was actually assigned by the company? A. That means he was assigned by the company effective as of March 2, 1948. That is the day he first started to draw pay.

Q. This man was Henry P. Miller, is that right? A. Yes. [220] Q. And he in fact thereafter did work on the Frances, did he? A. That's right.

Q. After this incident of late February and early March, did you have any contact with Mr. Fowler? A. He telephoned me some time after that, I don't know whether it

412

Robert H. Frey, for Board, Direct

was a day or two, and mentioned he was going to return to Miami.

Q. Beyond that period. A. I received a note from him some time later saying he was down in Miami and gave me a Miami address.

Q. Still later? A. I think the next one was a couple of months later.

413

Q. About a couple of months after the February incident? A. About a couple of months after the February incident, which would be around April.

Q. And what kind of contact was it? A. Well, it was a telephone call, telephone conversation when he called me on the phone on arrival in New York stating he was in New York and did not exactly know where he was going to stay at that particular time.

And I told him to get in touch with me later and let me know. He said he was up for a job, and I mentioned that there probably might be one showing up in a few days and if so, to let me know where he was so I could get in touch with [221] him and give him a call.

414

Q. After this conversation with Fowler, did you have an opening for any radio officer? A. Yes, we did.

Q. What ship and when? A. It was the Steamship Evelyn in Philadelphia, and it was around the 26th. I think I heard of it late on the 24th of April.

Q. When was that job on the Evelyn filled? A. The 27th of April.

Q. And who by? A. Frank Paese.

Q. When Paese reported for work, did he bring a clearance slip from the union? A. Yes.

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[222] Q. On April 27 the company issued its assignment to Paese to work on the Evelyn? A. Right.

Robert H. Frey, for Board, Direct

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Q. When you knew that you wanted to fill the job on the Evelyn, did you have any contact with the union? A. Yes. I called the union early on the morning of the 26th.

Q. That is Monday. A. That is on Monday, and I spoke to Mr. Glynn.

[223] Q. Who is Mr. Glynn? A. Mr. Glynn is Mr. Howe's assistant, I believe, or dispatcher for—

Mr. Geltman: Is that conceded?

Mr. Silverman: Oh, yes, yes.

416

The Witness: Dispatcher for the union. And I asked him whether Mr. Fowler was there or whether he knew where he could get hold of him because I wanted to get clearance for him for the Evelyn.

And Mr. Glynn did not make any comment. He said he would just see. And that was the extent of the conversation.

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The Witness: Mr. Glynn mentioned that—well, in the first place, I asked whether Mr. Fowler was there or if he knew where he could get hold of him and if he could, why, I would like to have him cleared for the Evelyn position.

417

Mr. Glynn said he would see, and he made no further comment, as far as I recall.

Q. (By Mr. Geltman) Did you have any more contact with the union on that day? A. Mr. Howe called me up on the afternoon of the same date and mentioned he would not give Fowler a clearance for the Evelyn or for any other Bull Line ship.

[224] And I again requested that he assign some man to

that particular position because I wanted to get him down to Philadelphia on the 27th.

Q. On this same day was Fowler in touch with you? A. Yes, he was. He was in the office.

Q. When in point of time with reference to the Glynn conversation and the Howe conversation? A. As I recall it, probably sometime around noon or a little after noon.

Q. Between the two? A. Yes, between the two.

419 And he dropped in to see me about any retroactive pay or I suppose back overtime coming. And I directed him to the proper department where he could check up on that. At the same time I mentioned to him that I had a position open on the Evelyn for him and if he got a clearance from the union I would be perfectly willing to assign him.

Q. Did you have any further contact with Fowler on that day? A. Late in the afternoon he called me up on the phone and mentioned that he could not get a clearance from the union for the Evelyn or any Bull Line ship.

Q. When in point of time was this in reference to Howe's conversation? A. Well, it was after this Howe's conversation with me.

420 Q. What did you tell him—tell Fowler? [225] A. I told him I was sorry but I could not do anything without an official clearance from the union.

Q. Since Mr. Howe spoke to you on that occasion, has the union ever told you or the company so far as you know they would permit you to hire Fowler? A. No, sir; not to my personal knowledge, no.

Q. You are the person who— A. Not me personally, anyway.

Q. You are the person with whom they ordinarily have contact? A. Ordinarily, yes, sir.

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Robert H. Frey, for Board, Direct

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Trial Examiner Scharnikow: * * * Am I correct in my understanding [226] that you testified you had a conversation with Mr. Glynn on April 26?

The Witness: Yes, sir.

Trial Examiner Scharnikow: And in that conversation you asked for Fowler?

The Witness: Yes, sir, I did. I asked whether Fowler was at the union office or if they knew where to get in touch with him because he had not advised me as to his location.

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Trial Examiner Scharnikow: After that, Fowler came in for his back pay.

The Witness: That is right, sir.

Trial Examiner Scharnikow: And you told him that you had a place for him on the Evelyn if he could get a union clearance?

The Witness: That is correct, sir.

Trial Examiner Scharnikow: And then after that Mr. Howe called you.

The Witness: Yes, sir. Or I called him. I don't recall. It was one way or the other.

Trial Examiner Scharnikow: You did have a conversation with Howe?

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The Witness: That is correct, sir.

Trial Examiner Scharnikow: In which Howe said he would not give Fowler clearance for the Evelyn or any Bull Line ship?

The Witness: That is right, sir.

Trial Examiner Scharnikow: And then Fowler again called [227] you to tell you Howe said he would not give him clearance for the Evelyn or any other Bull Line ship.

The Witness: If I said that, I didn't mean that. What I said was that Fowler said he could not get

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Robert H. Frey, for Board, Direct

any clearance for any Bull Line ship. I don't recall Fowler stating Howe said that.

Trial Examiner Scharnikow: Then your reply to Fowler at that point was what?

The Witness: That I was sorry I could not do anything about it unless he had an official clearance from the union.

Trial Examiner Scharnikow: Did you have any conversations or any communications with Fowler after that?

The Witness: With the exception that he called me and mentioned he was going back to Miami.

Trial Examiner Scharnikow: Was there any conversation at that time between you and Fowler as to a job with the Bull Line Steamship for Fowler?

The Witness: No. I made no mention that I would call him for another Bull Line assignment.

Trial Examiner Scharnikow: You made no such statement?

The Witness: I made no such statement, because I presumed from what he told me—

Trial Examiner Scharnikow: You made no such statement?

The Witness: No.

Trial Examiner Scharnikow: You did not discuss the [228] possibility of his being hired by the Bull Line Steamship Company?

The Witness: No.

Trial Examiner Scharnikow: Nor did he make any mention of that possibility?

The Witness: No, he did not either. That is, not to my knowledge.

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Robert H. Frey, for Board, Cross

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[229] Cross Examination:

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Q. (By Mr. Silverman) • • •

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[230] Q. Do you have any record of Mr. Kozel's signing off the ship at any time prior to February 26th? A. He signed off the Articles and was paid off on February 26, 1948.

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Q. Was anything called to your attention to the effect that Mr. Kozel was satisfactory to the skipper of the Frances? A. Yes. His services were satisfactory.

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[231] Q. When you dispatched this telegram to Mr. Fowler on February 24, had anything been done in the direction of discharging Mr. Kozel or accepting his resignation? A. I spoke to Mr. Kozel on board the ship and mentioned that—

Trial Examiner Scharnikow: When?

The Witness: That was probably the 24th or 25th.

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Q. (By Mr. Silverman) What did he say? A. I told him I had sent for a man with senior service in the company to replace him since he was there only for that one voyage only and that was the understanding in New Orleans.

Q. What did he say? A. He did not say anything in particular. He sort of more or less seemed a little perturbed. And I said, "Well, now, you have been satisfactory but if the union sees any differences," I said, "why don't you call the union up? I think it would be a good idea."

That was about the extent of our conversation and every-

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Robert H. Frey, for Board, Cross

thing was very friendly and no arguments one way or the other.

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[233] Q. The next call you received from Mr. Howe that you have testified to was a call on Friday, February 27, is that correct? A. That's right.

Q. And during the course of that conversation, Mr. Howe told you that he was not going to stand for Fowler replacing Kozel, was that the substance of the conversation? A. That is the sum and substance of it.

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Q. Did he also tell you that Kozel had protested this [234] replacement of him by Fowler? A. I don't recall whether he made that statement. He may have said that.

Q. You got that impression? A. That would be the general impression since I surmised Kozel had gone to the union, which was at my suggestion.

Q. What did you say to Mr. Howe when he told you of his protest against having Mr. Kozel replaced by Mr. Fowler? A. I requested then that if he felt like that about it, we would leave Kozel stay there.

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Q. Did I understand you correctly to testify that before the Frances left New York, you again called Mr. Howe and requested a clearance for Fowler? A. That was on Saturday, yes, sir.

Q. What? A. After I had seen the telegram that was sent to Mr. Fowler, at Pier 22, Brooklyn.

Q. And with whom did you have the conversation at that time? A. I am quite sure it was Mr. Howe.

[234] Q. What was said? A. Mr. Howe refused to give clearance to Mr. Fowler for the Frances; at which time I requested he assign another man or send Kozel back.

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Robert H. Frey, for Board, Cross

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[236] Q. Now you know, did you not, that before assigning a man [237] to a vessel owned by your company you were obligated to procure a clearance from the union? A. Well, sometimes clearances were dispensed with.

Q. Yes, but generally you knew— A. Generally speaking, there was always a clearance issued.

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[238] Q. Now, coming to the April incident, when Mr. Fowler first arrived in New York, he phoned you; is that correct? A. That's right.

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Q. Said he was in town. A. Yes, sir.

Q. Asked you whether there was anything doing? A. Yes, sir.

Q. And you told him at that time to keep in touch with you; is that right? A. That is correct.

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[239] Q. You merely suggested he keep in touch with you? A. Keep in touch with me in case something opens up, why I may have a position for you.

Q. Then April 26 came along and you telephoned the union; is that right? A. That's right.

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Q. (By Mr. Silverman) You had at that time already received this telephone call from Mr. Fowler so that you knew he was in town? A. I knew he was in town some place.

Q. And when you telephoned on the morning of April 26, do you [240] recall what time it was? A. Well, it was probably around 9:30, 9:15, 9:30, something like that.

Q. Might it have been any later than that? A. I hardly think so.

Q. Did you have any opening at that time for a ship? A.

Robert H. Frey, for Board, Cross

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At that time I had because I had heard about it late Saturday.

Q. And when you called the union office, you spoke with Mr. Glynn; is that right? A. Mr. Glynn, that's right.

Q. Can you tell us, as nearly as you can remember, precisely what it was you said to Mr. Glynn when he answered the phone? A. Well, I asked him if Mr. Fowler was there.

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Q. What did he say? A. He did not say whether he was or whether he wasn't. But I think he mentioned—I believe offhand he said he would take a look and what I actually asked was Mr. Fowler there and if not, would he know where I could get in touch with him because I would like to assign him to the Evelyn in Philadelphia.

Q. You said all that in one sentence, Mr. Frey? A. Undoubtedly I did.

Q. Do you have any recollection of Mr. Glynn saying to you that Mr. Fowler had left, just a few moments before, and had taken an assignment to a Waterman ship? [241]

A. No.

Q. You have no recollection of that? A. No.

438

Q. And you state definitely that on the morning of April 26 you mentioned the steamship Evelyn? A. Yes.

Q. When had the steamship Evelyn docked? A. She docked on the 26th in Philadelphia, as I recall offhand. Without the daily log in front of me, I would not say whether it was early on the 26th or late on the 27th.

Q. When was the Evelyn scheduled to depart again? A. Undoubtedly probably the 28th or 29th.

Q. When was Mr. Paese assigned to the Evelyn? A. The 28th, I think, wasn't it?

No, the 27th.

Q. 27th. And after Mr. Glynn said, as you have testified, he would look and see whether Mr. Fowler was there, what

did he then tell you? A. I think he mentioned he was not there. And I mentioned that if he came in, why, I would like to have him assigned to the Evelyn.

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[242] Q. And you have no recollection of Mr. Glynn mentioning anything to you concerning the fact Mr. Fowler had accepted an assignment to a Waterman ship? A. No.

Q. Did Mr. Glynn say anything to you as to whether Mr. Fowler had been there that morning? A. I don't recall that he did.

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Q. Did you get the impression from Mr. Glynn that Mr. Fowler had been there but had departed? A. No, not that I recall.

Q. Did you ask? What did Mr. Glynn say to you when you asked him if he knew where he could get in touch with Mr. Fowler? A. He did not mention that he could get in touch with him.

Q. Did you ask Mr. Glynn whether he knew where he could get in touch with him? A. Yes, I did because I did not know where I could get in touch with Mr. Fowler myself, although I knew he was in town.

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Q. What did Mr. Glynn say in answer to that question? A. I think he said he would look it up, something to that effect, which is undoubtedly what he would say, I am pretty sure.

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[243] Q. Now, sometime that morning Mr. Fowler dropped into your office, isn't that so? A. That's right. It was not in the morning. I think it was after 12 o'clock noon sometime.

Q. He came in to discuss some question of back pay with you or overtime? A. He wanted to check over and see if he had any coming to him, yes.

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Robert H. Frey, for Board, Cross

Q. What did you say to him when you saw him on that occasion? A. I told him I recall where he could go and check up on that back pay and overtime, if any, and I mentioned I had a ship in Philadelphia, the Evelyn, if he could get a clearance for it from the union, I would assign him to that vessel.

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Q. When Mr. Fowler came into your office on that occasion when he discussed his back pay, did you then call the union [244] and advise them that Mr. Fowler was there and you wanted a clearance for him for the Evelyn? A. No, I did not, because I depended on him to go up to the union and get the clearance. I told him I would call the union later and let them know that I wanted him although I had already told them in the morning that I wanted him. I was going to sort of brief them again to find out whether or not they had found him, whether he had arrived up there. In the meantime, Mr. Howe and I talked together and Mr. Howe said he would not give Mr. Fowler a clearance for the Evelyn or any Bull Line ship. So far as I was concerned, I just mentioned then just send me another man.

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Q. The only thing Mr. Howe said to you was that as far as the union was concerned, they would not give Fowler a clearance for a Bull Line ship? A. For the Evelyn or a Bull Line ship.

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[246] Q. During the conversation with Mr. Glynn on the morning of the 26th, did you specifically ask Mr. Glynn for a clearance for Mr. Fowler? [247] A. I asked Mr. Glynn if Mr. Fowler were there or if he knew where he could get in touch with him and if he could get in touch with him, I would like to have a clearance for him for the Evelyn.

Q. Do you know from your dealings with the union that

Fred M. Howe, for Board, Direct

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clearances are granted at the union office; isn't that so? A. Yes, because they are always signed by Mr. Howe or Mr. Glynn.

Q. When you saw Mr. Fowler again on that afternoon, did you suggest to Mr. Fowler he go up to the union office?

A. I did not.

Q. And ask for a clearance? A. I presumed he would go because I told him if—that I had a job on the Evelyn, that if he got a clearance for the Evelyn, I would assign him to the vessel.

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[265] FRED M. HOWE (Board Witness)

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Direct Examination:

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[266] Q. (By Mr. Geltman) Mr. Howe, you are the secretary-treasurer of the— A. I am the general secretary-treasurer.

Q. (By Mr. Geltman) Of the Radio Officers' Union. A. Of the Radio Officers' Union.

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Q. The respondent in this case? A. Of the Commercial Telegraphers' Union, AFL.

Q. What are your duties, Mr. Howe, as general secretary-treasurer?

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The Witness: I negotiate all the agreements and sign all of the agreements between the union and the company; take care of the funds and property of the union; and have general supervision of the representatives and the paid employees of the organization.

Mr. Geltman: I wish to call the Trial Examiner's

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Fred M. Howe, for Board, Direct

[267] attention to the fact I intend to assert the rights under the Section 43(b) of the Rules of Civil Procedure in the examination of this witness.

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[268] Q. (By Mr. Geltman) Mr. Howe, you assign unemployed union members to jobs, do you not, when they come in and you have jobs available? A. I do when I am there and if I am not there, then my assistants assign such members.

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Q. Back in the first half of 1948 that covers the period of these incidents which we have been discussing, when a job applicant showed up and asked you for a job, what did you do? A. If a man showed up looking for a job, we placed his name on a list. We had a list that we maintained at that time, and we endeavored to give jobs out in rotation to the best of [269] our ability.

If a man come in, if we had a job that had to be filled, we asked him if he wanted the job; being careful, of course, to give the job to the number one man if he was available.

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At that particular time, in the first part of 1948, jobs were so plentiful we sometimes had to beg men to take them.

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Q. If a man showed up who was not a paid up member do you [270] send him out on a job? A. We did that on many hundreds of cases.

Q. You— A. We sent out men during the war by the hundreds who were not even members of course, but we urged the men to pay up their dues.

Q. Let's refer to 1948. A. Yes.

Q. How about 1948, this first half of 1948? A. Is there some special—

Fred M. Howe, for Board, Direct

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Q. No. I mean what was your practice? If you had a man that came in and wanted to get a job. A. I will tell you what my practice is if you will let me.

Q. Go ahead. A. Everybody is supposed to be paid up in his dues. We had men, such as one I will describe very briefly, who had been in the hospital two or three operations. Unable to pay his dues, and I gave him a job under protest of a great many members. I don't say a great many—a few members—who thought he should be paid up. When I explained the man had a pretty hard time, they said, "O.K., let him take the job." 452

That is the practice. The practice is for them to be paid up, and if there is a special case like the one I mentioned, we tell him to pay when he comes back.

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[272] Q. Where you have these applicants all paid up and in good standing, what is the basis on which you pick one? That arrangement you described to me before? A. Well, every man that wants to ship out, his name is on a list. It was on the list. We don't maintain such a list at the present time because we have what we refer to as shipping dates, which is similar. 453

Trial Examiner Scharnikow: I think Mr. Geltman is asking you about the practices in February, March and April of 1948.

The Witness: Every man who was entitled to a job had his name on the list.

Q. (By Mr. Geltman) And the basis on which you gave out the job was that you described to me before? Your consideration [273] of how long a man was on the list— A. He could ship out regardless what his dues standing was.

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Fred M. Howe, for Board, Direct

Q. You mean to say if you had a man who was junior on the list— A. What do you mean by “junior on the list”?

Q. Who had been on the list for a lesser time—let us say one day—and had a man on the list for one month, and they both wanted the same job and the man who was on the list for a longer time was not paid up in his dues, you would ship him out? A. The man who was longest out of work and his name was on the list would be entitled to the job if he wanted it.

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Q. Regardless of good standing? A. Of what?

Q. Regardless of good standing? A. Yes, that is right. If we put him on the list, he could ship out.

Trial Examiner Scharnikow: Say a man came in on a particular day, did his position on the list depend on the day he came in to see you or on the day he told you he had last shipped?

The Witness: The day he left his last ship would determine his position on the list.

Trial Examiner Scharnikow: So that a man who came in today, who had just left his last ship yesterday—

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[274] The Witness: He went to the bottom of the list.

Trial Examiner Scharnikow: He went to the bottom of the list.

The Witness: But if he come in today and told me he got off his ship two months ago, he would not get this same number; he would go higher on the list.

Trial Examiner Scharnikow: He would go higher than the man who registered yesterday.

The Witness: And who got off yesterday.

Trial Examiner Scharnikow: And who got off yesterday.

Fred M. Howe, for Board, Direct

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The Witness: Yes.

Trial Examiner Scharnikow: It was not the date of registering at the union that determined the position on the list but the date when he last left his ship?

The Witness: The last day he left a ship determines the number he gets on the list.

Trial Examiner Scharnikow: So your list keeps shifting then? Your list does keep shifting.

The Witness: Yes. It keeps changing.

Trial Examiner Scharnikow: A man's position may go up and down on that list? 458

The Witness: Right now it is stationary. Oh, yes, it could change.

Q. (By Mr. Geltman) Is it your testimony it did not make any difference whether the man was in good standing or not, [275] you sent him out regardless? A. If the union placed his name on the list, my testimony was he could ship.

Q. Regardless of his standing? * * *

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[276] Back in February, 1948, you sent Fowler a wire, didn't you? A. Yes. 459

Q. I will show you the wire. A. Yes.

Mr. Silverman: It is General Counsel's Exhibit No. 4.

Q. (By Mr. Geltman) General Counsel's Exhibit No. 4. A. I sent the wire, that's right.

Q. How long after you sent Fowler that wire did he come in to [277] see you?

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Trial Examiner Scharnikow: First, did he come in to see you.

The Witness: That is in February?

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Q. (By Mr. Geltman) Yes, that is right. A. To my recollection, Fowler called me on the telephone the same day and to my recollection he came to see me on the same day. That was a Friday, I believe. That was Friday, the 27th, the day I sent the telegram. And I feel certain that was the day he called me on the telephone and we had a talk.

Q. Well, suppose you describe that talk to me?

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The Witness: I asked him why he had gone aboard this ship attempting to deprive another member of a job.

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Mr. Fowler was very nice about it. He said he did not know there was anybody on the ship. And he said had he known anyone was on the ship, he would not have come all the way from Miami to New York to take it. And, due to the trouble which had—it had developed—he said he was not going to take the job and he would return to Miami. He said he had some important work to do in Miami, and he would return there and [278] do that work. Then he would come back to New York and ship out.

During that conversation, Mr. Fowler and I discussed the Bull Line. He said he wanted to work for the Bull Line. And I told Mr. Fowler we had no objection of him working for the Bull Line or anyone else but what we did object in his case and in other cases was "bumping" other members who took the jobs in good faith. We did not object to Mr. Fowler taking any Bull Line job. But I told Mr. Fowler

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neither he nor anyone else would be allowed in the future to "bump a man" off when the man was given the position on a permanent basis, we wanted to know that he was going to hold that job. That is what we told Mr. Fowler.

And Mr. Fowler still said he wanted a Bull Line ship.

And I says, "We do not have any Bull Line ship at the moment. Kozel is on the ship." And he was, as far as I knew.

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And we discussed other jobs. I explained to Mr. Fowler that the Bull Line was not the only company that a man could work for. I said several men in the Waterman Line who seemed to think that the Waterman Line is the only company in the world; others that work for the Standard Oil of New Jersey think they must work forever for that particular company; others that work for the United States Line, they must work for that particular line. They would not work for the Bull Line. I told Mr. Fowler he and every other member should get this [279] out of their head because all the lines had signed the same contract, identical, word for word, and that as a matter of fact it would do him a lot of good and everybody else, and I recommended to everybody that they diversify their employment.

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Trial Examiner Scharnikow: This is what you told Fowler now?

The Witness: Yes. We had a long discussion.

Q. (By Mr. Geltman) Did you offer him any other job?
A. I told Fowler he could get a job any time by just asking for it. Shipping was good in February.

Q. Starting with then— A. I don't know whether I had a job at that minute, but he did not have to wait very long.

Mr. Fowler agreed to everything that I explained to him.

He said he thought he had worked for the Bull Line too long, he was becoming narrow, that he would ship on some other line for the experience. And he went away very happy, pleased at the discussion. I think he has testified to that effect here already. There was no animosity.

* * * * *

[280] Q. So you were interposing no obstacle to clearing Fowler [281] at the time he came to the office for a job; is that right? A. No. I offered him a job.

Q. Had there been any change in Fowler's status between the time you sent him the telegram and the time you offered him the job as you just testified? A. Yes.

Q. Why? A. He was suspended from membership in the telegram, and when I had the discussion with him, I lifted the suspension.

Q. After you had the discussion with him, which, according to your recollection, was the same day, you lifted the suspension? A. Yes, yes.

Q. And thereafter, he was the same as anybody else, and you had no objection to his having a job? A. No. That is right.

Q. From the time he got the telegram to the time you did lift the suspension later that same day, is it your contention he was actually in suspension?

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The Witness: I would say he was under state of suspension [282] for a few hours. Not very many.

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Q. (By Mr. Geltman) You listed the suspension yourself, didn't you? A. Yes, I did.

Q. You, yourself, imposed the suspension, didn't you? A. Yes.

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Q. . . . Who told you that Fowler was trying to get Kozel's job? A. Kozel himself.

Q. How long did he tell you that before you sent that telegram? A. Kozel was in to see me three different times, on three separate days, and I think there was a day or two extra—not three consecutive days. He was in there three times complaining that Mr. Frey had told him he might be fired.

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[283] Q. Did you send this the first time you heard from Kozel or the last time? A. Send the telegram?

Q. Yes. A. I think it is in evidence there.

Q. But with reference to the time Kozel was there to see you, how long after that? A. It was after his second visit. In fact, it was during his second visit. He was there when I sent it.

Q. So it is your testimony you sent the telegram and you suspended Fowler all by yourself and you lifted the suspension all by yourself? A. Yes.

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[284] Mr. Geltman: Do you have a copy of the constitution?

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Trial Examiner Scharnikow: Suppose you mark it. How many pages there?

Mr. Geltman: There are three.

[285] Trial Examiner Scharnikow: Mr. Reporter, will

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you please mark it 13A, 13B and 13C for identification?

(Whereupon, the document above referred to was marked General Counsel's Exhibit No. 13A, 13B and 13C for identification.)

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Q. (By Mr. Geltman) Is this a copy of your constitution, Mr. Howe? A. This is a copy of the constitution of the Commercial Telegraphers' Union, the parent organization of the Radio Officers' Union.

Mr. Geltman: I offer it in evidence.

The Witness: The Radio Officers' Union has by-laws.

Mr. Geltman: That is right.

* * * * *

[287] Trial Examiner Scharnikow: Are you marking and offering a copy of the by-laws of the Radio Officers' Union also?

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Mr. Geltman: Yes. I intend to do the same with the by-laws.

Trial Examiner Scharnikow: Suppose you have it marked, and then if you see fit, you may offer the two exhibits.

Mr. Geltman: Mr. Reporter, will you please mark this as General Counsel's Exhibit 14.

(Whereupon, the document above referred to was marked General Counsel's Exhibit No. 14 for identification.)

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Q. (By Mr. Geltman) Mr. Howe, is this a copy of the by-laws of the Radio Officers' Union? A. Yes.

Q. They cover the period in question in 1948? [288]
A. Yes.

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Trial Examiner Scharnikow: I will overrule the objection and admit in evidence General Counsel's Exhibit 13A, 13B and 13C, and Exhibit No. 14.

(Whereupon the documents previously marked General Counsel's Exhibits Nos. 13A, 13B, 13C and 14 were received in evidence.)

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Q. (By Mr. Geltman) Now, in the light of your testimony that you did this—the suspension and the remission of suspension all by yourself, * * *

Q. (By Mr. Geltman) I want to say that I have run through the articles heretofore referred to with respect to suspension and find nothing which tends to show you have authority; and I want to ask you whether you can find anything, looking at this copy of the by-laws—

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Q. (By Mr. Geltman) (Continuing)—which indicates you had such authority?

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Mr. Silverman: We have Article 7.

[289] Trial Examiner Scharnikow: Go ahead, Mr. Howe.

The Witness: The General chairman has the sole right to suspend a man from membership except when he is not present I have that right. That is in the by-laws.

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Fred M. Howe, for Board, Direct

Q. (By Mr. Geltman) Will you show it to me, please?

Trial Examiner Scharnikow: Where is it?

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[290] Q. (By Mr. Geltman) That still does not recite the duty or the right of the general chairman. You say the general secretary-treasurer shall act as chairman.

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The Witness: Section 7, Article 7: "The general secretary-treasurer shall act as general chairman in all absences of the General Chairman."

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Trial Examiner Scharnikow: Since I have the exhibit here, I will permit counsel to point out what he regards to be the material portion of the exhibit.

Mr. Silverman: Mr. Trial Examiner, in conjunction with Section 7 of Article 7 must be read Section 3 of Article 7 which is before the Trial Examiner and which provides for the immediate suspension of any member whose activities are such—

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Trial Examiner Scharnikow: I have it here.

[291] Mr. Silverman: (Continuing)—that the best interests of the union are endangered.

I might also refer the Trial Examiner to the provisions of Section 1 of Article 17 of the by-laws.

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Q. (By Mr. Geltman) (Continuing) Of General Counsel's Exhibit 14, Mr. Howe, I read that any member violating the by-laws and so on shall first be advised by the officer of the Radio Officers' Union first having knowledge

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of the foregoing to correct his dereliction, and if such is persisted in and not abated, the member shall be immediately suspended by the general chairman and have charges brought against him as provided in Article 7.

[292] I want to ask you, in the light of that: your first notice to Fowler was, was it not, the telegram? A. No. I do not consider that to be the first.

Mr. Fowler had been a member of the union for five and one half years, and when he joined the union, he signed an application blank for membership that he would live up to the rules.

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Q. Did you give him any other notice before the telegram? A. He received notices for five and one half years, monthly magazines, all kinds of official bulletins.

Q. Let's stick to the February incident.

On that occasion, did you give him any other notice than the telegram? A. He received the usual bulletins that go out in the month of February.

Q. Did you give him any notice with respect to the taking of Kozel's job other than the telegram? A. No. I did not mention Kozel, no. Didn't know about Kozel at the time.

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Q. Then the telegram was the only communication you had with Fowler up to that point? A. No, not the only communication.

Q. In February? A. I met Mr. Fowler many times and we discussed various matters over the years.

[293] Q. I know that, but I am talking about— A. The first of the—

Q. The February incident. A. What date are you talking about now?

Q. You sent Fowler a telegram dated February 27. A. I sent him nothing else on that particular date.

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Q. You sent nothing to him prior to that? A. Not that particular date.

Q. You had no conversation with him prior to that time, on or about that date, prior to that date, did you? A. You say prior. That covers a lot of territory.

Q. In the few days preceding. A. How many days?

Q. In a day or two before the telegram was sent. A. No.

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Q. So that was the first notice you sent to him, starting with the day or two preceding that day? A. Yes.

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Q. (By Mr. Geltman) Now, referring to Article 7, Section 3, which provides the general chairman shall with the consent of [294] the general committee, suspend immediately any officer or member of the Radio Officers' Union whose activities are such and so on.

You have told me, haven't you, that you did this all by yourself? A. That's right.

Q. You did not have anybody else's consent? A. No.

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[295] (By Mr. Geltman) In any event, Mr. Fowler was unsuspended after he saw you, when he saw you; isn't that right? A. He was restored to good standing, yes.

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[296] Q. (By Mr. Geltman) You did not clear anybody for that job until you cleared Mr. Miller; isn't that right? A. Miller was cleared for the job.

Q. And that was about half past three on Sunday, March 1, isn't that right? A. Roughly, I believe. Whatever this says, that is about the right time.

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The Witness: 3:35 p. m., March 1, 1948.

Q. (By Mr. Geltman) So that if you lifted the suspension a few hours after the telegram on Saturday, there was a substantial time between the lifting of the suspension and the time when Miller was assigned to the job, wasn't there? A. Yes. A couple of days or so.

Q. Before clearing Miller for the job, did you make any attempt to locate Fowler? A. Mr. Fowler said he was returning to Miami, and I assumed that is where he went to.

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Q. Did you send him any wire to the ship? A. No.

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[297] Q. Did you get in touch with the company and tell them insofar as the company was concerned Fowler being in good condition could have the job? A. I do not recall that I did. I didn't know that Kozel had left the ship at that time.

Q. You had sent the wire to Fowler first right to the ship, hadn't you? A. That's right.

Q. So you knew he was there at that time? A. Yes. Kozel said he was on board. Kozel was in my office when I sent the telegram. He had just come from the ship and said Fowler was on board.

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[302] Trial Examiner Scharnikow: Mr. Howe, in your practice in making these assignments and giving clearances, making the selection of men to go out on jobs, was it for you to make the assignment only to the men who were in the office at the time or to run through the list and get in touch with those that happened to be at the top of the list?

Fred M. Howe, for Board, Direct

The Witness: It depended greatly on the state of shipping at the moment. If we were short of men. we had to call outside. But if the company wanted a man in a big rush, we had to fill the job with the nearest available man. In almost every case, the company wanted a man in two hours. We haven't got time to call Miami and get Mr. Fowler up here. We have to take a man who is immediately available, and he must live in a hotel close by if he has got to move his baggage. It all depends on the job and the situation in regard to shipping at the time.

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[303] Trial Examiner Scharnikow: In filling that job, you would then send the man who was on the top of your list.

The Witness: If he was available.

Trial Examiner Scharnikow: If he were available. Assuming there were men in the office when such a call came in but there were men who were not in the office who were higher than the men in the office on the list, would you call out and get those other men?

The Witness: I will have to repeat my reply again that it would depend on where these men were.

The man who has number one on the list might be in Pittsburgh or be in Miami, as Fowler was. In that case I judge the time.

If Mr. Frey said, "I want a man down here right away to ship and the ship sails at five o'clock," that is a special [304] problem. If he says three or four days, we have a chance to get Fowler up, from

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Miami, as an illustration. We try to go by the list the best we can but we have to fill jobs regardless of the list.

Trial Examiner Scharnikow: In other words, you try to get the man highest on your list.

The Witness: Who is available.

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[309] Mr. Geltman: Counsel for the respondent union and I have just stipulated that respondent's record concerning the date when the assignment on the Semmes was offered to Mr. Fowler bears the date April 26, 1948.

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Is that true?

Mr. Silverman: That is true. And so that the record may be clear, we have referred at various points in the record to the S. S. Semmes or actually the correct name of the ship is the S. S. Raphael Semmes, and may it be understood whenever we have referred to the Semmes it is the S. S. Raphael Semmes we have been referring to.

Trial Examiner Scharnikow: Is it agreeable?

Mr. Geltman: I so stipulate.

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Cross Examination

Q. (By Mr. Silverman) Mr. Howe, when this telegram, General Counsel's Exhibit 4, was dispatched to Mr. Fowler, is it correct that Mr. Kozel was in your office at that time? [310] A. Yes, he was.

Q. As you understood it from him, had he just come from the S. S. Frances? A. Yes.

Q. Was it on the basis of the information he gave you

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that you believed that Mr. Fowler was on the Frances?
A. Yes.

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497

Q. Was there any reason that prompted you to send that telegram other than the complaint that you had received from Mr. Kozel to the effect that Mr. Fowler had come aboard that vessel to replace him against his—that is, Kozel's—will? A. That was a climax to a series of “bumpings” as we call them, by which one man gets another man's job and is not entitled to it. Mr. Fowler in my opinion was trying to “bump” [311] Kozel with the aid of the company. We had several reports over the years to that effect.

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[312] Q. (By Mr. Silverman) Mr. Howe, was any member of the union who was complying with the shipping rules adopted by the New York office of the union permitted to go aboard a ship for the purpose of working on that ship without having obtained a clearance from the union? A. No, not at all.

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Q. Was every member who was complying with the shipping rules of the union required to notify the union when he left a ship? A. Yes. Before he left the ship.

Q. And was not one of the purposes of that rule to assure the [313] fact that no one, no member of the union, would be granted a clearance for a ship until the previous operator had signified his intention of leaving that ship? A. That was one of the important reasons, yes.

Q. These rules that were in practice and followed by the New York office of the Radio Officers' Union were provided for under the provisions of the by-laws of the Radio Officers' Union—I am referring particularly to section 19—were they not? A. Yes.

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Fred M. Howe, for Board, Cross

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Trial Examiner Scharnikow: Do you want to indicate the portion of the by-laws to which you have reference?

Mr. Silverman: I would like to, all right. Article 19, Section 3.

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[318] Q. (By Mr. Silverman) Will you tell us, Mr. Howe, the practical method of application and interpretation of the provisions of the agreement between the union and the companies with whom it was under contract pertaining to employment practices as defined in the agreement and as actually practiced between the union and the companies? [319] A. Well, the companies telephone the union in New York and any port where we maintain an office, they telephone the union and they ask for a radio officer.

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Trial Examiner Scharnikow: You are telling us now what actually happened, aren't you?

The Witness: Yes. There have been cases where a company has asked for a certain individual. That is not very frequent, however. In fact, it is very, very infrequent. They do not call up and say, "We want Mr. Joe Beef," or "We want Mr. Fowler." They call up and say, "Send me down a radio officer."

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Trial Examiner Scharnikow: What happens in the case where they do ask for a specific man?

The Witness: We will ask them why they prefer this man or we will endeavor to get hold of the man, if we can, if he is available, we try to get him for the company. But we do like to know the reason why they want a certain individual.

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Fred M. Howe, for Board, Cross

Trial Examiner Scharnikow: Do you clear a man in that case at the instance of the company in spite of the fact he is not at the top of the list?

The Witness: We have cleared many hundreds of them. I can say at this time some of the members don't think too much of that system.

Trial Examiner Scharnikow: You have done it?

The Witness: We have done it, yes.

503

Q. (By Mr. Silverman) Was that prevalent primarily in the [320] days of the war when there was no— A. It was more so—it was more so during the war than it is now. We did not object to it then at all when—because there was a shortage of men anyhow, and sometimes these calls came through because the captain took a liking to the radio officer. They went to the same—

Trial Examiner Scharnikow: You have done it in a number of instances in any event.

The Witness: Yes.

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Q. (By Mr. Silverman) Now I want to get back to this February incident, after the sending of the telegram and your conversation with Mr. Fowler.

When that conversation ended, did you have any knowledge of where Mr. Fowler was going? A. He said he was going home. To me that meant Miami.

Q. Did you at that time know whether Mr. Kozel was going to return to the Frances or not? [321] A. My information was that he was still on board because when I sent the telegram on the previous day, they had been sent because he did not want to lose his job, so I assumed he was still on the ship.

Fred M. Howe, for Board, Cross

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Mr. Geltman: Who is this?

The Witness: Kozel.

Q. (By Mr. Silverman) And when did you learn for the first time that Mr. Kozel was not going to sign on the ship again? A. Kozel contacted me in person. I just forgot what date that was, whether it was Saturday or Sunday or Tuesday. I don't have that in my mind. But he did contact me in person, I recall that, and he already had his transportation to New Orleans, I believe it was, and he told me he was leaving, he had gotten fed up with so much trouble. And so I asked him then why he had gone to so much trouble if he didn't want the job. And he said, "I wanted the job but I would not want to sail the ship now after all this trouble because I feel I am not wanted on the ship and the captain might ride me, or the company might make it miserable for me."

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[322] Q. (By Mr. Silverman) Do you know or do you have any recollection at this time as to whether this conversation that you had with Mr. Kozel concerning the fact he was returning to New Orelans occurred before or after the talk with Fowler? A. After.

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[325] Q. (By Mr. Silverman) There came a time, Mr. Howe, on April 26 when you had a conversation with Mr. Fowler concerning an assignment to the S. S. Raphael Semmes, is that right? A. That was in the afternoon of the 26th over the telephone.

Q. That's right. To the best of your recollection had you had any personal conversation with Mr. Fowler prior to the afternoon, the telephone conversation on the afternoon of April 26th? A. No.

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Fred M. Howe, for Board, Cross

Q. Do you have any recollection of any visit to your office by Mr. Fowler on the Friday or Saturday morning before April 26, 1948? A. No, sir.

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[326] Q. Do you have any recollection of a conversation in which Mr. Fowler argued with you or discussed with you his right to an assignment to any ship that he pleased prior to April 26th? A. I did not see Mr. Fowler during the month of April at all to my recollection.

509

Q. You had a phone conversation with him? A. A short, brief telephone conversation.

Q. Did Mr. Fowler ask you for a clearance for the S. S. Evelyn at any time during the course of that telephone conversation? A. No, sir, he did not.

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[327] Q. Do you recall any conversation with Mr. Fowler during the [328] course of which he said to you in words or substance, that he wanted, as a member in good standing, to be cleared to a Bull Line ship? A. Over the telephone, he said he would like to work for the Bull Line. I said, "How are you going to work for the Bull Line when I don't have any Bull Line ships today?"

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Mr. Geltman: On what occasion is this?

The Witness: This is on the—

Trial Examiner Scharnikow: 26th of April.

The Witness: 26th of April in the afternoon. I think it was around 2 o'clock, to my recollection.

Q. (By Mr. Silverman) Up to that point, Mr. Howe, had any request for a man for a Bull Line ship received by the union to your knowledge? A. That was on the—no.

Fred M. Howe, for Board, Cross

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Q. April 26? A. No. No call from the Bull Line for any ship.

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[330] Q. (By Mr. Silverman) Did you on the afternoon of April 26, 1948, during the course of a telephone conversation or phone conversations with Mr. Fowler have any knowledge at that time of any opening aboard any Bull Line ship? A. No, I did not.

Q. Did Mr. Fowler mention any specific Bull Line ship for [330] which he wished a clearance? A. He did not.

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Q. Did you at any time prior to the 27th of April, 1948, have any knowledge of an opening for the radio officer aboard a Bull Line ship? A. I was apprised of that after I arrived at the office, which was probably around noon.

Mr. Geltman: On what day?

The Witness: On the 27th.

Q. (By Mr. Silverman) Does the time of the assignment of Frank Paese, which refers to 10:30 a.m., does that refer to the hour when the call came in for the man or does that refer to the hour of the assignment? A. The hour of the assignment. The call must have come in before that time. Otherwise we could not give out this job.

513

Q. Now, did Mr. Fowler ever appear at the office of the union after this telephone conversation that you had with him on the afternoon of April 26th? A. No.

[334] Q. Is it a fact that during the course of the conversation with Mr. Fowler in your office after he had received the telegram which is now General Counsel's Exhibit No. 4, that you made some statement to Mr. Fowler to the effect that there were other jobs available for him at that time which you urged him to take in lieu

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Fred M. Howe, for Board, Cross

of the trip he had made from Miami? A. You are going back to the February date now?

Q. Yes, back to the February date. A. Speaking of the telegram I sent Fowler?

515

Q. Yes. After he came in to speak to you about the telegram; during the course of that conversation did you say anything to him about other jobs being available then that he could have? A. I think my testimony was to the effect that I told him that he could have a job almost any time, almost any minute or hour of the day. Jobs were plentiful. He could take his choice. He was practically number one, number one on the list.

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[342] Trial Examiner Scharnikow: Are you prepared to say—of course Mr. Howe has already testified and he has not testified as to the union's taking any action to suspend the membership of Mr. Fowler except on this date, February 27, 1948.

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Mr. Silverman: We say that no other claim or bad standing is germane to the issues as we understand them here and under the facts as we know them to have been or as we claim them to have been.

Trial Examiner Scharnikow: Then I take it that for the purposes of this case Mr. Fowler was in good standing at all times between February 1, 1948 and April 26, 1948 except for this period—this short period of hours on February 27, 1948; is that right?

Mr. Silverman: That's right.

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Fred M. Howe, for Respondent, Direct

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[347] FRED M. HOWE (Respondent's Witness)

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Direct Examination:

Q. (By Mr. Silverman) Mr. Howe, during the month of February, 1948, when for the first time did you have any communication either oral or written with Mr. Fowler? A. February, 1948.

[348] Q. I am referring to the incident aboard the Steamship Frances. A. To my recollection, it was Mr. Fowler's telephone call in reply to my telegram.

518

Q. So that the telegram was the first communication from you to Mr. Fowler during that incident; is that right? A. As near as I can recall; yes.

Q. I believe you have already testified that that telegram was sent while Mr. Kozel was in your office and as a result of these complaints that had been made by Mr. Kozel to you concerning his discharge or attempted discharge from the Steamship Frances? A. Yes, sir.

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[360] Q. (By Mr. Silverman) At any time during the existence of the agreement, Respondent's Exhibit 2, which would carry us from during the period of 1947 and 1948, did the union grant its clearances by any means other than the physical delivery of a clearance to a man who appeared at the Union Hall for the purpose of obtaining such a clearance?

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The Witness: I think that we did in one or two occasions, we mailed a clearance to the man in another port. I think about it—I think we did that here the other day to a man who lives in the State

Fred M. Howe, for Respondent, Direct

of Virginia, not too far from Norfolk; [361] and he wrote me and asked me if he had to come to New York to obtain the clearance. Naturally we told him that was not necessary. He could take the ship in Norfolk. However, we treat the outlying ports where we maintain no office much differently because we have to, than we do here in New York.

Q. (By Mr. Silverman) So far as the practice here in New York, what is the practice with respect to that, as far as obtaining clearances?

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Do you know the question now, Mr. Witness?

The Witness: What is the practice in New York on the issuance of clearances?

They all come to the union office in New York.

Trial Examiner Scharnikow: But you do on occasion telephone a man who does not happen to be in the office when you get a call?

The Witness: But he will come to the office to get the clearance.

[362] Trial Examiner Scharnikow: But he will come to the office to get the clearance?

The Witness: That is right.

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Q. (By Mr. Silverman) Any member who leaves a ship thereupon has a certain shipping date; is that correct?

A. That is correct.

Q. Which corresponds with the date on which he leaves a ship? A. That's right.

Q. That man may or may not be interested in shipping again immediately, isn't that so? A. That's right.

Fred M. Howe, for Respondent, Direct

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Q. And any time that man signifies a desire to ship out again, he has the right to ship out again, predicated upon his last shipping date; is that right? A. That's right.

Q. A man who is not in the New York area and who has reached [363] the point where he desires to ship out will customarily communicate with the union for the purpose of finding out approximately when he could ship out; isn't that so? A. That is correct.

Q. If a member asks you to notify him approximately when he can obtain an assignment, you will notify him when he is approaching that point; isn't that so? A. That is so.

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Q. And upon notification of the fact he would be able to obtain an assignment, that man will normally come to New York for the purpose of obtaining such an assignment? A. That is right.

Q. Is that correct? A. That is correct.

Q. Once men reach the stage where they are approximately eligible, based upon their shipping dates, for an assignment, they customarily come to the Union Hall; is that correct? A. With certain exceptions. The exceptions are those that seem to take a great delight in having their names appear at the top of the list for a long time. It gives them a certain advantage. They know they can take any ship, and they do not come in immediately when their names are at the top of the list.

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Q. But when, as and if, they elect to come in, they are at the top of the list and they are entitled to first preference on any job that may be available at that time. [364] A. They present themselves as little kings, and they can come in and take the job at any time they wish; and they do so.

Q. Was it under that very practice that Mr. Fowler

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Fred M. Howe, for Respondent, Direct

was the top man on the list on April 26, 1948? A. Yes, that was the same practice.

Q. Now if an opening for a job is reported to the union or a request for a man is made to the union, do I understand correctly that that opening is then announced at the offices of the union and is made available to whomever wishes to bid on that job, preference being given to the man longest out of work?

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The Witness: The practice is as follows: At ten-thirty in the morning and at two-thirty in the afternoon we announce to our men, all men present in the hall, the jobs that we have available that must be filled at that particular time.

Trial Examiner: Meaning that day?

The Witness: Meaning that day or possibly the next day.

Should any job come in prior to 10:30 or between 10:30 and 2:30 p.m., which is classified by us as a pierhead jump, which means they must have a man in a rush, then we go out in the hall at any time during the day and endeavor to induce [365] a man to accept one of these assignments. That is the practice.

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[366] Q. (By Mr. Silverman) Now, Mr. Howe, if the union were notified of a job available and if at that particular time any individual member of the union had an older shipping date, for example, than men seated in the hall, would the men in the hall still have the right to bid on that job despite the fact there might be members on the roll with older shipping dates? A. We give out the

Fred M. Howe, for Respondent, Direct

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job to those in the hall at the time unless there is a shortage of men, and we are obliged to use the telephone to outside cities and states to get men.

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Trial Examiner Scharnikow: What about a call for a man, not a particular man but for a man to fill the job where the job is to be filled, say, a week after the request is made?

The Witness: We hold the job in that case until a day or two days before the man is to take the job. If the company wanted the man on a Monday morning, we might decide to fill the job on the previous Friday. Not—

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Trial Examiner Scharnikow: Assume you have a request for [367] a man on a Monday, the job to be filled on the following Monday: What do you do in that case?

The Witness: Withhold the job until Friday.

Trial Examiner Scharnikow: Would you do anything about it at all?

The Witness: No. Just leave it on the desk.

Trial Examiner Scharnikow: Would you tell any of the men seated in the hall in that week before Friday?

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The Witness: Well, we might tell the men, "Well, we will have a job coming up next Monday morning. Any of you men wanting to go to China, there will be a ship going to China." But we will not give the job out until Friday or Saturday. We usually announce that then.

Trial Examiner Scharnikow: Would you make any attempt to notify the men at the top of the list?

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Fred M. Howe, for Respondent, Direct

The Witness: If I can know—

Trial Examiner Scharnikow: Would you make any attempt from the time on Monday when the request by the steamship company is made until Friday to notify men at the top of the list who do not come in and sit in your hall during that week?

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The Witness: No. Unless the only exception to that would be if we knew a certain individual wanted to go to China and this job was going to China, we might call him on the telephone, if we had the time, and thought of it, or send him a telegram, something, a letter telling him it might be [368] advisable for him to come in at a certain time, certain date because we are going to give out a job on a ship going to China and if he has the right number he could bid on it. We might notify them.

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[371] Q. So that the method by which the man signifies his desire to ship out is by appearing and asking for a particular clearance or by bidding on a particular job in the union hall, isn't that so? A. By bidding on the jobs.

Q. Now, is it also true that every man who bids on a job that is announced in the hall is by that action asking you for a clearance, assuming he is the successful bidder?

A. Yes. It is assumed he will get one if he bids on the job.

Q. And if because of priority in shipping date one man is [372] given the clearance for the job, by the same token that clearance is denied to every other man? A. That is correct.

Q. In February, 1948, when Mr. Miller was assigned to the Steamship Frances, was there any reason having any-

Fred M. Howe, for Respondent, Direct

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thing to do with union activities or lack of union activities or any other consideration that caused you to show any preference in favor of Mr. Miller as against Mr. Fowler when that assignment was made? A. I distinctly recall the day we gave that job out. There was quite a crowd in the room. I would judge there was 20 or 25 men, and very few men bid on the job. And Mr. Miller was given the assignment solely because he had the oldest shipping date of those who wanted the job. There may have been others there that had an older shipping date, but they did not want the job, they did not bid for it; therefore Mr. Miller was given the clearance.

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Q. In April, 1948, when Paese was assigned to the Steamship Evelyn, was there any reason for assigning Paese in preference, for example, to Mr. Fowler or any other member?

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[374] Trial Examiner Scharnikow: What was Paese's last shipping date, if you have a knowledge?

The Witness: Before he took the Evelyn?

Trial Examiner Scharnikow: That is right.

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The Witness: Yes, sir. Paese's shipping date at that time was March 19, 1948.

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[376] Q. (By Mr. Silverman) Has your office of the union ever during the period 1948 issued a clearance to a man before it has received notification from a company that a man is desired aboard the vessel of that company? A. No.

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Fred M. Howe, for Respondent, Cross

[381] Q. Will you refer to your records, please, Mr. Howe, and tell us who the operator was aboard the Evelyn during the month of April, 1948 and what the date of his departure from the ship was? A. The man's name was Vanzandt Stone. He left the Evelyn at Philadelphia on April 27, 1948.

Q. April 27, 1948? A. That is correct.

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Q. Had you received any word from Mr. Stone or from Mr. Frey or from Mr. Fowler at any time before April 27, 1948 of any vacancy aboard the Evelyn? A. No, sir. None at all.

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Cross Examination:

Q. (By Mr. Geltman) Mr. Howe, let's go back to that February incident. You said the first time you knew there was anything to complain of was when Kozell came in and complained.

When was that? [382] You mean the exact date?

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Q. Well, in point of time; you know when you sent the telegram because we have the telegram, General Counsel's Exhibit No. 4. A. You don't want the exact date. Just in general?

Q. How long before you sent the telegram did you first see Kozell and hear the complaint? A. That was the second visit he was there.

Q. You mean when you sent the telegram?

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[383] Q. So when you sent out the telegram it was with knowledge from Kozell that Kozell had been discharged?

[384] A. That he had not separated himself from the ship; he was still aboard the ship; he was to be discharged.

Fred M. Howe, for Respondent, Cross

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Q. That he was to be discharged or that he had been discharged? A. Well, you can get technical about it. He was to be discharged, that was definite.

Q. What was the background for that? What did he tell you? How did he arrive at this new situation? A. That the company had told him.

Q. Who had told him?

Trial Examiner Scharnikow: Did he say?

The Witness: I don't recall whether it was Mr. Frey or the captain or who it was now. He said the company was discharging him.

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Q. (By Mr. Geltman) So he told you then he was going to be discharged, is that right? A. Yes, yes. He told me it was definite that he was to be dismissed from his job.

* * * * *

[386] Q. When Mr. Kozell came in and complained about the discharge, [387] didn't you take up with the company, yourself, of your own volition, the injustice that had been done? A. No, I did not call Mr. Frey then.

Q. I show you this letter, General Counsel's Exhibit 12 which you have acknowledged you wrote.

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Q. (By Mr. Geltman) The last sentence there is, "We thereupon registered our protest with the company." A. I did. I sent Mr. Kiggins a telegram.

Q. What did you say in it? A. You have it here.

Trial Examiner Scharnikow: You sent whom a telegram?

The Witness: Mr. Kiggins.

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Fred M. Howe, for Respondent, Cross

[388] Q. (By Mr. Geltman) Is this the telegram you sent?

Mr. Geltman: Will you mark this, please, Mr. Reporter?

(Whereupon, the document above referred to was marked General Counsel's Exhibit No. 16 for identification.)

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The Witness: That is the telegram.

Mr. Geltman: I offer it in evidence.

Mr. Silverman: May I see it, please? No objection.

Trial Examiner Scharnikow: General Counsel's Exhibit No. 16 for identification is admitted in evidence.

(Whereupon, the document previously marked General Counsel's Exhibit No. 16 for identification was received in evidence.)

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[389] Q. You knew, didn't you, when you spoke to Mr. Fowler, he [390] coming up from Miami—I am talking of the time he saw you after he received this telegram, General Counsel's Exhibit No. 4—that he came up from Miami specifically to take that job which had been offered him by the Bull Steamship Company, didn't you? A. I knew that only from what he told me.

Q. He told you that? A. He told me he had come up to get the job.

Q. That particular job? A. Yes, that is right. That particular job.

Q. You have told us that he left with you the impression

Fred M. Howe, for Respondent, Cross

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he was going to go back, the job not having been received, is that it? A. He told me he was going back to Miami.

Q. But you knew that was the very job he wanted, it was that job because you offered him other jobs, didn't you?

A. Yes. I knew that was the only job he came up there for.

Q. Did Kozell tell you Mr. Fowler was staying on the ship? A. He said Fowler was on board. He had moved his things on board. I assumed he was staying.

Q. Now you issued the clearance to Miller, didn't you, to take the job on the Frances? A. I gave the job out that afternoon.

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[391] Trial Examiner Scharnikow: Did you receive a request from the Bull Steamship Company to fill that job?

The Witness: Yes, sir.

[392] Trial Examiner Scharnikow: Did you, yourself?

The Witness: Yes.

Trial Examiner Scharnikow: How did it come to you?

The Witness: I was ordered to fill that job.

Trial Examiner Scharnikow: How did it come to you? How did this particular job come to you?

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The Witness: I am trying to tell you I was ordered to fill that job either by Captain Williams or Mr. Kiggins, I do not recall which one of these men told me to go ahead and fill the job, because I talked to both that day.

Trial Examiner Scharnikow: What day?

The Witness: I think that was on Monday, wasn't it, or was it Tuesday? I forget the dates here.

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Fred M. Howe, for Respondent, Cross

[393] Q. (By Mr. Geltman) Did you receive the call for the job on a Monday? A. I received the telephone call on a Monday.

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[394] Mr. Silverman: Mr. Trial Examiner, I understand that at your request the Shipping Articles covering the Steamship Frances have been produced here and that counsel to the general counsel and myself are prepared to stipulate that the facts pertaining to the Shipping Articles as disclosed by the Articles are substantially as follows:

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First, that the Shipping Articles actually signed pertaining to the Steamship Frances upon which Mr. Kozell's name appears were originally executed on November 26, 1947 and provided that the Steamship Frances which was then bound from the Port of New York, had its destination "one or more ports in Europe either direct or via one or more United States Atlantic and/or Gulf ports and such other ports and places in any part of the world as the master may direct and back to a final port of discharge in the continental United States for one voyage only or for a term of not exceeding nine calendar months."

It is my understanding that the effect that Articles in that form have is to make the Articles or the employment—and these articles are in effect a contract between the master and the members of the crew—to the effect that the employment [395] was for the period specified in these Articles, namely for one voyage as I have described it or for a period of nine months, whichever was the lesser of those two periods of time. In other words, if the voyage

Stipulation

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should be in excess of nine months, the crew would have the right to be paid off at the termination of nine months should they so elect.

These Articles further disclose that as originally signed on or about November 26, 1947 Mr. Jay J. Lopez was the radio officer on that vessel, and his number on the shipping Articles was the number 16; and that the last signature appearing on these Articles is the signature of Alexander Kozell, radio; the date of Mr. Kozell's signing on was apparently December 22, 1947; that these Articles further show on a sheet which is entitled, "Particulars of Discharge or Receipt" that 48 men apparently who presumably comprised the entire crew of this vessel received their wages and signed off Articles by their signature on this sheet that I have just described on February 20, 1948, except that Lopez had apparently signed off on December 22, 1947; and that the last name appearing on this sheet containing "Particulars of discharge" is the signature of Alexander Kozell.

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I understand likewise there is no objection to stipulating as to the following facts with respect to the signing of Ship's Articles and the signing off of Ship's Articles:

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Namely that the act of signing off Ship's Articles [396-7-8] carries with it no implication whatsoever to the effect that the individual so signing off Ship's Articles is thereby permanently severing or terminating his employment with the particular vessel or the particular company, in that in actual practice a large or at least a very substantial portion of the members of the crew who sign off articles do in

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Fred M. Howe, for Respondent, Cross

fact remain on the vessel or return to the vessel and thereafter they sign new articles for the subsequent voyage which in all likelihood would be in form similar to the Articles I previously described; that the date of signing off Articles does not necessarily carry with it an implication of termination of the individual so signing off the payroll of the company, but does, as I understand it, merely involve a switch over from a voyage payroll aboard the vessel while on active duty to what is known as the port payroll; that is the case of Mr. Kozell, he was carried on the port payroll until February 26, 1948.

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Trial Examiner Scharnikow: Is that proposed stipulation agreeable?

Mr. Geltman: That stipulation is agreeable.

Trial Examiner Scharnikow: Very well.

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[399] FRED M. HOWE resumed the stand and was examined and testified further as follows:

Cross Examination (Continued):

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[414] Q. (By Mr. Geltman) Let's turn to the April incident. You have testified that on April 26 you had a telephone call from Fowler, isn't that right—April 26.

Let me refresh your recollection. A. That was after he had taken the Raphael Semmes.

Q. After the Raphael Semmes incident? A. That was the 26th, I believe. To check on the date—it was after he had rejected the Raphael Semmes, whatever date that was.

Q. The date of the Raphael Semmes incident? A. He called me on the telephone in the afternoon.

Q. Will you tell me please what happened in that conversation? A. You mean what was said?

Q. That's right. A. What I said and what he said?

Q. Yes. A. That is impossible. I can only tell the substance of it.

Q. Do. A. The substance of it was, he said he was refusing the Raphael Semmes. And I asked him why. His reply was, in substance, he didn't like the setup. I said what do you mean, you don't like the setup? [415] He said, well, he had come on board and he had talked to two or three fellows and he just didn't like the setup. And he—and I want to be assigned to a Bull Line ship.

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And I says, "How are we going to assign you to a Bull Line ship if we do not have any?"

That was in substance what we discussed.

Q. Didn't you hang up on him on that occasion? A. I have no recollection of hanging up on him, no. I usually don't do that.

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[416] Q. Isn't it true that from the time you saw Fowler in February right through to the time you spoke to Fowler on this occasion on April 26, you kept telling Fowler not to take a Bull Line ship, that you would not let him take it? A. I kept telling him?

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Q. That's right. A. He was in Miami. How could I tell him? I wasn't in Miami.

Trial Examiner Scharnikow: The answer is you did not.

The Witness: I did not.

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Fred M. Howe, for Respondent, Redirect
Joseph P. Glynn, for Respondent, Direct

Q. Well, he was at your office in February after you sent him the telegram dated February 27; that is right.
 [417] A. Yes.

Q. Was there any conversation at that time in the course of which you said, "You cannot get a Bull Line ship, I won't let you have one?"

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The Witness: I may have told Mr. Fowler that he could not have a Bull Line ship unless I had one. I did not tell him he could not have a Bull Line ship.

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[425] Redirect Examination:

Q. Do you ever assign that job, a job aboard that ship, or announce the existence of an opening aboard that ship until you have received a call from the company? A. We never assign a man to a ship like that; but sometimes I do tell the men that on a certain day in the future there will be a job that will be given out in this hall.

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Q. In other words, that indicates to you the likelihood and [426] the prospect of a job? A. That is all it indicates.

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[429] JOSEPH P. GLYNN (Respondent's Witness)

Direct Examination:

Q. (By Mr. Silverman) Mr. Glynn, what is your position with the Radio Officers' Union? A. I have been employed on a steady basis at the Radio Officers' Union since the latter part of January, 1948.

Joseph P. Glynn, for Respondent, Direct

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My position there is that of Mr. Howe's assistant.

Q. Now, are you in charge of the office during the absence of Mr. Howe? A. That's right. I run the office while Mr. Howe is away.

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[432] (By Mr. Silverman) Do you recall seeing Mr. Fowler at the office of the union during this February incident? [433] A. Yes. I can truthfully say that I recall seeing him there. I do not recall that I carried on any conversation with him.

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Q. Do you recall any telephone call coming into the office of the union subsequent to the occasion of that visit in February by Mr. Fowler? A. No. I could not swear to that. The telephone rings every three or four minutes. If Mr. Howe picked it up, I would have no way of knowing who it was.

Q. Did you personally have any conversation with Mr. Fowler at that time? A. No.

Q. I would like now to take you to this April incident. When, for the first time, around April or the latter part of April did you see Mr. Fowler? A. On the morning of Monday, April 26, 1948, at approximately, I should say, anywhere between 9:15 and possibly 9:30 and 9:45 a. m.

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Q. Mr. Fowler has given some testimony here about a visit that he paid to the office of the union on the Friday or Saturday prior to April 26, 1948.

Do you recall any such visit? A. I do not recall any such visit.

Q. Mr. Fowler has testified in connection with that alleged visit that during the course of that visit Mr. Howe called [434] you into his office and asked you to witness the ceremony of Mr. Howe offering Mr. Fowler a job.

Does that in any way refresh your recollection? A. No.

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Joseph P. Glynn, for Respondent, Direct

Q. As to a visit by Mr. Fowler prior to April 26? A. No, it does not.

Q. When Mr. Fowler appeared at the office of the union on April 26, 1948, you at this moment have any recollection of having seen him within a matter of a day or two or three prior to that?

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Q. (By Mr. Silverman) In other words, when he came in on April 26, 1948, to the best of your recollection was that the first time during that period when you had seen Mr. Fowler? A. That is correct.

Q. When Mr. Fowler came to the office of the union on April 26, will you tell us what happened? A. There wasn't—

Do you want me to give you the whole train of events which took place April 26 in the morning?

Q. Yes, I wish you would. [435] A. Mr. Fowler came in, as I have testified, approximately sometime maybe between 9:15, 9:30, 9:45, and there were other members in the hall at that time, too, possibly six, eight, ten, something like that.

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And I should judge at approximately oh, 9:45, I received a call from Miss McCann, she is in the personnel office at the Waterman Steamship Company. She told me she wanted a man for the S. S. Raphael Semmes, and she would like to have him sent down that morning.

So I got all the information from her on the job that I could, where it was going and so on, where the ship was docked, and so on and so forth. And about 10 o'clock I went out into the outer from the inner office and gave that job out along with another job that had come in, a tanker; and I announced those two jobs to the men that were in

the hall at that time. And the men that were interested in either one of the two jobs could give their bids.

And after accepting all bids, I went back into the inner office to determine who was top man and who should get first crack at these jobs.

Mr. Fowler was the top man that wanted the S. S. Raphael Semmes, and I made out the clearance and the assignment slips for this job; and as I was doing so, Mr. Fowler asked me if it would be all right if he went down to look at the ship before he positively and flatly stated he was going to take it. [436] I said, "of course that will be all right, but just so you do not put us in a hole by waiting for the last minute, I want you to call us back."

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So Mr. Fowler left the office which, I would say, might be ten or fifteen minutes later, which may be about 10:15 a. m.

And then about 10:20 a. m. the telephone rang; I picked up the receiver and said, "Hello." And the voice on the other end was that of Mr. Frey.

Mr. Frey said, "Say, have you seen Fowler around?" I am not positive whether he said "Around town" or "Around the hall" or "Around the office," but he said, "Have you seen him around?"

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I said, "Why, yes, he was just here but he left a few minutes ago. I assigned him to a Waterman Line ship, Mr. Frey."

Mr. Frey said, "Oh, I see. Thank you very much." And the conversation ended. We both hung up.

Q. Did Mr. Frey during the course of that conversation say anything to you about the fact that he wanted Mr. Fowler for the S. S. Evelyn? A. He did not.

Q. Did he say anything to you to the effect he wanted a man for the S. S. Evelyn? A. He did not.

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Joseph P. Glynn, for Respondent, Direct

Q. Did he indicate to you in any way there was an opening [437] aboard the S. S. Evelyn? A. No.

Q. Now, was Mr. Fowler in the office of the union at the time that Mr. Frey's telephone call came in? A. I have just testified Mr. Frey's telephone call came in anywhere from five to ten minutes after Mr. Fowler had left the office with his assignment to the Waterman Line ship.

Q. You apprised Mr. Frey of the fact Mr. Fowler had left the office with that assignment? A. That is correct.

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Q. During the course of the day did you receive any further word personally from Mr. Frey or Mr. Fowler, do you recall? A. Not from Mr. Frey or Mr. Fowler, no.

Q. Did you at any time during the course of that day, as far as you can recall, receive any word of an opening for a man aboard the S. S. Evelyn? A. That is on April 26?

Q. That's right. A. No, I did not.

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Q. When for the first time were you aware of any opening aboard the S. S. Evelyn? A. To my recollection the first time that I was aware of any opening on the S. S. Evelyn was in the morning of April 27. That would be a Tuesday. I cannot pin the time down exactly, but sometime between the time I opened the office at nine and [438] I will say 10 or 10:15, I received a call from the company asking for a man for the S. S. Evelyn.

Q. Do you have any recollection as to who it was that made that call? A. I cannot state absolutely who it was. It might have been Mr. Frey; may have been Captain Williams; may have been someone else.

Q. Will you tell us generally how the assignment or the granting of clearances to men functions in the office of the Radio Officers' Union? A. You are speaking I presume of February and April, 1948?

Joseph P. Glynn, for Respondent, Direct

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Q. That's right. A. As has already been testified, we have what you call a shipping list, and the members who are waiting for employment are on that list. Their position on that list is determined by what we call their shipping date.

In other words, the time they got off their last ship is their shipping date.

When we receive a call from a steamship company to the effect they want a radio officer to place on the S. S. Never-sink, the job is given out in connection with that beach list. In other words, we ask the men who are in the hall at that time that the job is given out, we ask them to put up their hands or to signify in some way they wish to bid on the job. [439] We take their names down and we determine who is the top man on the shipping list. That man gets first crack at the job. He is not coerced. He is not forced to take it. But if he wants to take it, that is his privilege. He has first crack.

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Q. Do all men who are interested in shipping out signify their availability for employment by their presence at the hall at the union office? A. Well, if they want to get a job they should because the union does not feel it is the union's obligation to go hunting all over creation to route up a man. If he wants a job, he should make himself available in the hall.

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Q. Were there occasions during the period we are discussing when a request would be made for a particular man who would be sought out by the union even though not present at the union office? A. Offhand, you are speaking of, I presume, January, February and March and April of 1948?

Q. That's right. A. I have no recollection of receiving

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Joseph P. Glynn, for Respondent, Direct

any calls myself personally by any steamship company asking for any individual.

Q. What is the general nature of the call that is received by the union—during that period? A. The steamship companies call and they ask for a radio officer; and that is what we send them, a radio officer.

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[440] Q. And the particular radio officer who is given clearance for the job is chosen or selected on the basis you have described, tied in with the shipping date? A. That is right. He is not chosen by myself or by Mr. Howe whether we dislike the man or like the man, that has no bearing at all. If he is top on the list and he wants the job, he gets it, provided he is satisfactory to the company.

Q. Are there any occasions when a company has called and said, "I want Mr. John Doe," and the union has thereupon telephoned or wired or sent an investigator out to find Mr. John Doe to see whether he is interested in shipping at that moment. A. In the months of January, February, March and April, 1948, I would say no, not to my recollection.

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Q. When you qualify it by those months, are you thinking of conditions during the war when the union cooperated with companies in the direction of trying to seek men who might at that particular moment not be particularly interested in shipping but who were asked to ship as a matter of patriotic duty? A. I am speaking of mainly due to the fact I did not start working on a steady basis until the latter part of January, 1948, at the Radio Officers' Union office.

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[449] Trial Examiner Scharnikow: Something else has occurred to me, gentlemen.

At several stages in the hearing, when Mr. Geltman started to go into questions dealing with the

Colloquy

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possible [450] employment of Mr. Fowler, I made rulings based upon the propriety of postponing for the compliance stage, in the event an order is issued, any question of loss of earnings, the extent of loss of earnings.

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[454] Trial Examiner Scharnikow: But the problem I have I don't want the record to be confused on. That is why I am butting in as I am at the present moment.

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Are you submitting for my finding and recommendation to the Board on the record at the present stage of the proceeding the question of whether or not there was any failure on the part of Fowler to secure other employment, so that even if a [455] discrimination should be found by the Board and an order issued against the respondent union, no order for compensation should be a part thereof?

Mr. Geltman: No, I have not. That is to say, I have not shown affirmatively with respect to Fowler's presence in the labor market thereafter.

Trial Examiner Scharnikow: The reason I ask the question is this: It should be understood we are either trying that issue or we are not trying that issue. If we are trying that issue for submission on whatever evidence we have in this hearing, then I will make a recommendation in that respect. If we are not trying that issue, gentlemen, if you feel that although incidentally some pertinent evidence has come into the record, there may be other evidence you will eventually want to submit, assuming it will reach the compliance stage, then I will not make a recommendation.

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Colloquy

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Mr. Geltman: Under the circumstances, in view of what you have just outlined, I would be faced here with the burden of going forward with—let me say: In the usual compliance case the burden of determining whether removal from the labor market falls upon the respondent if there has been an order. I do not want to assume that burden here. Consequently I have not—

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Trial Examiner Scharnikow: Are you assuming that burden, Mr. Silverman?

[456] Mr. Silverman: Mr. Trial Examiner, I think I should at this point make our position on this quite clear.

During the earlier stages of this hearing it was possible to delve into matters which would have had a bearing upon any possible question of compliance. I understood that some questioning along those lines was curtailed for the reason it fell into that category.

Trial Examiner Scharnikow: Let me say that is correct. That is my understanding.

588

Mr. Silverman: However, I do not think that the answer to the question you have just put or the questions you have just put to the counsel for the general counsel and to me need necessarily be answered uniformly with respect to the two possibilities.

May I expand on that for just one moment?

Trial Examiner Scharnikow: Surely.

Mr. Silverman: It is our contention that regardless of what decision may be rendered here, the proof adduced as part of a recital of all the facts and circumstances surrounding the alleged unfair

labor practice is such that from the words of the charging party himself as well as from other almost uncontroverted proof or uncontrovertible proof, that it clearly appears that in any event no back pay award would be warranted in this case under any circumstances.

Trial Examiner Scharnikow: Are you willing, in that [457] connection to foreclose yourself—

Mr. Silverman: No.

Trial Examiner Scharnikow: (Continuing)—
from the use of any other evidence in a possible compliance stage?

590

Mr. Silverman: No. That is why I say this is one situation where what is fish may not necessarily be fish.

Trial Examiner Scharnikow: That is the reason why I raise the question.

Mr. Silverman: I do say in my opinion, Mr. Trial Examiner, the record so clearly establishes that in any event no back pay award would be proper in this situation, that it would be entirely within the province of the Trial Examiner to so find on the basis of the record as it appears, on the basis of the record of the charging party himself.

591

Trial Examiner Scharnikow: In other words, I could make a finding there should be no back pay award?

Mr. Silverman: Yes.

Trial Examiner Scharnikow: But I cannot make an absolute finding there should be a back pay award?

Mr. Silverman: That is right.

To expand on that for a moment—

Colloquy

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Trial Examiner Scharnikow: All right. I understand you. I am pretty sure I understand you.

The sum and substance is neither of you gentlemen is willing to depart from the normal rule that the question of the [458] extent of the possible back pay award shall be tried at this stage of this proceeding.

Mr. Geltman: Should not be tried.

593

Trial Examiner Scharnikow: Should not be tried. Therefore, in that posture I will say that since you do not expect me to make the recommendation and both of you reserve the right to introduce pertinent evidence or additional pertinent evidence, when, as and if it becomes necessary, I will not make a recommendation.

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594

Trial Examiner Scharnikow: Let me repeat what I have said: On the basis of this discussion, I consider the question of [459] whether or not a back pay award should be cut down to the extent Mr. Fowler could have secured other employment not an issue in this hearing, and I will make no recommendations—this is a flat statement—I will make no recommendations in my report on that question.

The evidence that might be pertinent on that question has come in incidently and in spite of rulings where my attention has been called to that, excluding that type of evidence, excluding other points; and to make the position clear and your burden in this matter definite, I am now stating I will not make any recommendation but will observe the ordinary rule on the compliance question. That will not preclude your using, as I see it, any evidence in this case

Colloquy

595

at that stage in the compliance stage, and of course will not preclude your going into additional evidence.

Mr. Silverman: Mr. Trial Examiner, do you feel if you should find from the testimony adduced in this record that it is obvious and clear that a back pay award would be inappropriate in this case you would be precluded from so recommending?

Trial Examiner Scharnikow: I am not going to conjecture as to the possible arguments and the possible additional proof that Mr. Geltman might produce when he gives direct attention to that question, and I am now definitely stating that question is not in this hearing, and will not be considered in my report.

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[463] Trial Examiner Scharnikow: Just one second. Do I have any dispute as to the appropriateness of a radio officer's unit consisting of those officers of the Bull Steamship Company or the fact that a majority of those officers in such a unit had designated the respondent union as their bargaining agent on the date of the extension of Respondent's Exhibit 2, which was in August, 1947? Have I any dispute of that?

597

Mr. Geltman: We do not contend that—I think we are in agreement that the Radio Officers' Union was the representative of the radio officers.

Trial Examiner Scharnikow: So that on that basis I may properly make a finding that such a unit is appropriate and that a majority of such members of the unit on the date I just mentioned had

598

Robert H. Frey, for Board, Redirect, Recross

designated the respondent union as their bargaining agent?

Mr. Geltman: No dispute as to that.

Mr. Silverman: No dispute as to that.

Trial Examiner Scharnikow: There is no dispute as to that.

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[464] ROBERT H. FREY (Board Witness recalled)

599

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Redirect Examination:

Q. (By Mr. Geltman) When you spoke to Mr. Glynn on the morning of April 26, did he tell you in words or in substance, "Mr. Fowler has left the office?" A. No, sir.

Mr. Geltman: That is all.

Recross Examination:

Q. (By Mr. Silverman) What did he say about Mr. Fowler, Mr. Frey? A. When I called up, I asked him was Mr. Fowler in the union office and whether or not, if he was not, whether he knew where he could get hold of him because I had a job on the Evelyn for him.

600

Q. Did you say that all in one breath, Mr. Frey? A. The same as I did just now, yes.

Q. When you said to him, "Is Mr. Fowler in the office," did Mr. Glynn make any answer at that point or did you continue with your questioning or "do you know whether or not you can get hold of him," or did he interrupt at that point? A. He interrupted at the point where, "Is Mr. Fowler in the office," and I said, "Do you know where you can get hold of [465] him?" That is the trend of the conversation.

Robert H. Frey, for Board, Recross

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Q. The first question you put to him was, "Is Mr. Fowler in the office?" and he did answer "No" to that, is that right? A. That's right.

Q. And your next question was, "Do you know where you can get hold of him?" Did he answer that question? A. I said, "Do you know where to get hold of him because I have a position on the Evelyn in Philadelphia for him."

Q. What did he answer to that question? A. He said he would see, and that is where it was left.

* * * * *

602

[466] Q. Who was the radio officer aboard the Evelyn immediately prior to April 2? A. Prior to Paese, you mean, or at the time that I called up for Fowler?

Q. At the time you called on the morning of April 26, 1948, who was the officer aboard the Evelyn? A. The radio officer at that time was Vanzandt Stone.

Q. And did Mr. Stone quit the job? A. Yes, he did.

[467] Q. When did he quit the job? A. He quit the job in Philadelphia on, I think it was the 26th when she arrived there. I believe she arrived on the 26th.

Q. Would your records show— A. From Baltimore.

603

Q. Would your records show the last date on which Mr. Vanzandt Stone was on the payroll of the Bull Line?

* * * * *

The Witness: Our personnel records indicate he got off on the 27th of April.

Q. (By Mr. Silverman) How did you know on the 26th of April Mr. Stone was not going to remain aboard the Evelyn? A. I was advised by our Baltimore office when the ship arrived in Philadelphia he was getting off the ship and they would need a new man. That was on Saturday, the 24th of April.

604

Robert H. Frey, for Board, Recross

Q. That was before the ship docked? A. That was before the ship arrived in Philadelphia from Baltimore.

Q. Is it not a fact, Mr. Frey, that as a general rule when a job opening occurs in the Port of Philadelphia that the Baltimore office of the Radio Officers' Union is requested [468] to assign a man? A. No.

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Q. That is not the fact? A. That is not the fact and it is not generally followed. I consider Philadelphia under as much, we will say, the jurisdiction of the union office in New York to assign a man as well as the Baltimore office.

Q. Was there any reason why you did not call the office of the union on April 24? A. Yes. It was late in the afternoon and I did not have any reason to call them then and Monday morning was plenty of time to call.

Q. When had you first heard Fowler was in town? A. I imagine it was around the 22nd or 23rd of April.

* * * * *

[470] Q. (By Mr. Silverman) Did you ever, after the morning of April 26 again call the union—

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Q. (By Mr. Silverman) (Continuing) —to request—

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Q. (By Mr. Silverman) (Continuing) —a man for the Evelyn?

* * * * *

[471] The Witness: Mr. Howe and I had a conversation in the afternoon of April 26 sometime after noontime and at that time he stated to me that he would not clear Fowler for the Evelyn or any other Bull Line Ship.

* * * * *

General Counsel's Exhibit 2

607

(Letterhead of A. H. Bull & Co., New York)

March 21, 1950

Oscar Geltman, Attorney
National Labor Relations Board
2 Park Avenue
New York City

Re: Radio Officers Union
Case 2-CB91

Dear Sir:

603

At your request, I am supplying the following information concerning A. H. Bull Steamship Company, 115 Broad Street, New York City. The facts set forth below I know of my own knowledge because of my familiarity with the operations of the Company.

The above named concern was incorporated in New Jersey in 1902. It is now and was during the years 1948 and 1949, engaged in operating its own ships and ships chartered by it, between states of the United States and between the United States and foreign countries.

During the year 1948, the corporation operated an average of approximately 30 vessels; and during the year 1949, the corporation operated an average of approximately 23 vessels. In the course of each of said years, the corporation transported, by the ships described above, ~~articles and commodities~~ between the states of the United States and between the United States and foreign countries, articles and commodities of a value, in each of said years, in excess of five million dollars.

609

Yours very truly,

A. H. BULL STEAMSHIP CO.

(Signed) W A KIGGINS JR.
W. A. Kiggins, Jr.

610

General Counsel's Exhibit 3

(WESTERN UNION TELEGRAM)

DUPLICATE OF TELEPHONED TELEGRAM

ND48 PD=AX NEWYORK NY 24 402P

1948 FEB 24 PM 4 32

WILLARD FOWLER=

68 SOUTHWEST 8 ST MIAMI=

611

PROCEED NEW YORK AS SOON AS POSSIBLE FOR
POSITION SS FRANCES=

A H BULL AND CO AGENTS.

612

General Counsel's Exhibit 4

(WESTERN UNION TELEGRAM)

N195 DL PD 3 EXTRA=SI NEWYORK NY 27 251P

WILLARD C FOWLER RADIO OFFICER, STEAM-
SHIP FRANCIS=
PIER 22=

1948 FEB 27 PM 2 57

-614

YOU ARE HEREBY SUSPENDED FROM MEMBER-
SHIP IN THE RADIO OFFICERS UNION ON
GROUNDS THAT YOU NEGLECTED TO OBTAIN
CLEARANCE FOR YOUR PRESENT JOB AND ALSO
FOR BEING A PARTY TO DEPRIVING ANOTHER
MEMBER OF HIS JOB STOP LOCAL OFFICE OF
SEAFARERS INTERNATIONAL UNION AND HARRY
LUNDEBERG BEING NOTIFIED OF THIS ACTION
YOU MAY BE REINSTATED TO MEMBERSHIP BY
COMPLYING WITH RULES OF THIS UNION=

FRED M HOWE GENERAL SECRETARY
TREASURER RADIO OFFICERS UNION.

615

616

General Counsel's Exhibit 5

No. 12

The
COMMERCIAL TELEGRAPHERS' UNION

[Emblem]

January 6, 1948

Received from WILLARD C. FOWLER

..... TWELVE & 00/100 Dollars

Account of Dues 1st Qtr. 1948

617

\$12.00

(Signed) FRED M. HOWE
MM

Secretary-Treasurer

618

General Counsel's Exhibit 6

(Letterhead of The Radio Officers' Union, New York)

March 25, 1948.

Mr. Willard C. Fowler,
68 S. W. 8th Street,
Miami, Fla.

Dear Brother Fowler:

Enclosed you will find a receipt and a membership card covering the \$12.00 which we received from you in today's mail. This pays your dues at the full active rate through the second quarter of 1948. Many thanks for your remittance. It is highly appreciated.

Your name is on the waiting list here for jobs and we shall be pleased to offer you the best we have. I am sure you will enjoy and benefit by a change of companies. Your name will be sufficiently high on the list so that you can obtain a good assignment without waiting for more than a day or two, and this only so you may select the type of ship you desire.

With best wishes and kindest personal regards, I remain,

Sincerely and fraternally yours,

(Signed) FRED M. HOWE
General Secretary-treasurer

622

General Counsel's Exhibit 7-A

CERT.

NO. 1104 MARINE DIVISION

This card is not transferable. It must be signed in ink by the person to whom it is issued, who is entitled to fraternal courtesies. Expired cards should not be honored. This card is good only when countersigned by the international secretary-treasurer, and expires June 30, 1948.

ADDRESS

SIGNED

Countersigned:

RICHARD D. HALLETT

INTERNATIONAL SECRETARY-TREASURER

AFFILIATED WITH AMERICAN FEDERATION OF LABOR

TRADES AND LABOR CONGRESS OF CANADA

THE COMMERCIAL TELEGRAPHERS' UNION

624

ISSUED TO

WILLARD C. FOWLER

CONTINUOUS

GOOD UNTIL

MEMBER SINCE

June 30, 1948**July 1, 1942**

[Emblem]

UNLESS REVOKED

W. L. ALLEN

INTERNATIONAL PRESIDENT

RICHARD D. HALLETT

INTERNATIONAL SECY.-TREASURER

General Counsel's Exhibit 7-B

No.....32.....

THE COMMERCIAL TELEGRAPHERS' UNION

[Emblem]

March 25, 1948

Received from WILLARD C. FOWLER

***** TWELVE & 00/100 ***** Dollars

626

Account of Dues 2nd Qtr. 1948

\$12.00

(Signed) FRED M. HOWE

MM

SECRETARY-TREASURER

627

628

General Counsel's Exhibit 14

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ARTICLE 7—GENERAL CHAIRMAN

* * * * *

629

Sec. 3 The General Chairman shall, with the consent of the General Committee, suspend immediately any officer or member of the ROU, whose activities are such that the reputation and best interests of the ROU are endangered, but such suspension shall not deprive the officer or member of his rights as a member. The basis of such suspension shall, within thirty days, be prepared in the form of charges and served on the accused in the form and manner set forth in Article 23, Sections 1 and 2 of the CTU Constitution, and the General Committee shall hear such charges as provided in Article 9, Section 4 of these by-laws.

* * * * *

630

Sec. 7 The General Secretary-Treasurer shall act as General Chairman in all absences of the General Chairman.

* * * * *

ARTICLE 17—RESPONSIBILITY

Sec. 1 Any member violating the by-laws of the ROU, the CTU Constitution, the contracts and agreements held by the ROU, and in any way contributing to the lessening of respect for the laws, rules, contracts,

and agreements of the ROU, and the good name of the ROU, shall first be advised by the Officer of the ROU first having knowledge of the foregoing to correct his dereliction, and if such is persisted in and not abated, the member shall be immediately suspended by the General Chairman and have charges against him as provided in Article 7, Section 3 of these by-laws.

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General Counsel's Exhibit 16

(WESTERN UNION TELEGRAM)

WU K31 DL PD 3 EXTRA=SI NEWYORK NY 27 231P
 .319P.

A H BULL CO=
 VICE PRESIDENT
 W A KIGGINS.

635

THIS IS TO INFORM YOU THAT WILLARD C. FOW-
 LER IS NOT IN GOOD STANDING IN THIS ORGANI-
 ZATION ON GROUNDS THAT FORCING ANOTHER
 MEMBER OUT OF EMPLOYMENT IS STRICTLY
 AGAINST UNION BY LAWS STOP I AGAIN QUOTE
 PROVISIONS OF OUR AGREEMENT REQUIRING A
 CLEARANCE FOR ALL SUCH JOB. SEAFARERS
 INTERNATIONAL UNION LOCAL OFFICE AND
 HARRY LUNDEBERG BEING NOTIFIED=

=FRED M HOWE

GENERAL SECRETARY TREASURER RADIO OFFI-
 CERS UNION.

636

Respondent's Exhibit 2

637

THE RADIO OFFICERS' UNION

C. T. U.—A. F. of L.

1947

STANDARD DRY CARGO AND

638

PASSENGER SHIP

AGREEMENT

639

THE RADIO OFFICERS' UNION

1440 BROADWAY

NEW YORK, N. Y.

640

Respondent's Exhibit 2

* * * * *

Companies to which Standard Agreement applies:

UNITED STATES LINES COMPANY
 AMERICAN SOUTH AFRICAN LINE, INC.
 A. H. BULL STEAMSHIP CO.
 SEAS SHIPPING COMPANY, INC.
 SMITH AND JOHNSON
 SOUTH ATLANTIC STEAMSHIP LINE

641

AGWILINES, INC.
 THE NEW YORK & PORTO RICO STEAMSHIP CO.
 MISSISSIPPI SHIPPING COMPANY
 EASTERN STEAMSHIP LINES, INC.
 BLOOMFIELD STEAMSHIP COMPANY
 FALL RIVER NAVIGATION CO.
 ISTHMIAN STEAMSHIP COMPANY
 WATERMAN STEAMSHIP CORPORATION
 BALTIMORE INSULAR LINE
 SEATRAN LINES, INC.

642

AMERICAN LIBERTY STEAMSHIP CORPORATION
 PENINSULAR & OCCIDENTAL STEAMSHIP CO.
 NEW YORK AND CUBA MAIL STEAMSHIP CO.
 AMERICAN EASTERN CORPORATION
 ALCOA STEAMSHIP COMPANY, INC.
 NEWTEX STEAMSHIP CORPORATION
 WILLIAM J. ROUNTREE CO., INC.
 MERCHANTS & MINERS TRANSPORTATION CO.

* * * * *

WITNESSETH:

Article I—Employment

SECTION 1. The Company agrees when vacancies occur necessitating the employment of Radio Officers to select such Radio Officers who are members of the Union in good standing, when available, on vessels covered by this Agreement, provided such members are in the opinion of the Company qualified to fill such vacancies.

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644

SECTION 3. When a member of the Union in good standing qualified to fill the vacancy is not available the Company will notify the Union twenty-four (24) hours in advance before a non-member of the Union is hired, and give the Union an opportunity to furnish without causing a delay in the scheduled departure of the vessel a competent and reliable Radio Officer with the license necessary for the position to be filled.

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645

SECTION 6. The Company shall have the right of free selection of all its Radio Officers and when members of the Union are transferred, promoted, or hired the Company agrees to take appropriate measures to assure that such members are in good standing, and the Union agrees to grant all members of the Union in good standing the necessary "clearance" for the position to which the Radio

646

Respondent's Exhibit 2

Officer has been assigned. If a member is not in good standing the Union will so notify the Company in writing.

• • • • •

Dated this 11th day of January, 1947.

By.....

647

Attest:

RADIO OFFICERS' UNION OF THE
COMMERCIAL TELEGRAPHERS' UNION

By FRED M. HOWE
General Secretary-Treasurer

Attest:

• • • • •

648

Respondent's Exhibit 3

The Radio Officers' Union
C. T. U. — A. F. of L.
Room 1568
1440 Broadway
New York, N. Y.

MEMORANDUM OF AGREEMENT

It is hereby mutually agreed this 16th day of August, 1947, by and between the Radio Officers' Union of the Commercial Telegraphers' Union and A. H. BULL STEAMSHIP COMPANY/BALTIMORE INSULAR LINE that the collective bargaining agreement dated January 11, 1947, as amended, be extended to August 15, 1948, and that Section 4, Article 23 be changed to read as follows:

650

The parties hereto enter into this Agreement for a period to and including August 15, 1948. The parties hereto also agree that sixty (60) days prior to the expiration of this agreement negotiations will be entered into for the purpose of reaching a satisfactory new agreement.

651

The terms and provisions of this Agreement shall not become effective on vessels operated for the account of the Maritime Commission until all the terms

652

Respondent's Exhibit 3

and provisions hereof shall have been authorized by
the Maritime Commission.

Dated this 16th day of August, 1947.

RADIO OFFICERS' UNION of the
COMMERCIAL TELEGRAPHERS' UNION

By: (Signed) FRED M. HOWE
General Secretary-Treasurer

653

A. H. BULL STEAMSHIP COMPANY
BALTIMORE INSULAR LINE

By: (Signed) W A KIGGINS JR

654

BLURRED COPY